

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, Nelson Russell, Pat Walsh, Steve Bedell, Howie Weiss

**Members Absent:** Mayor Robert Greenbaum, David Scapicchio, James Staszak, Scott Van Ness

**Professionals Attending:** Chuck McGroarty, Planning Consultant, Gene Buczynski, P.E., Edward J. Buzak, Esq., Catherine Natafalusy, Planning Administrator

**Professionals Excused:** Tiena Cofoni, Esq.

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**COMMITTEE REPORTS**

MR. WEISS: All right as far as committee reports we said the Mayor is not here. Mr. Walsh do you have a Council report?

MR. WALSH: Nothing for tonight.

MR. WEISS: Okay we'll hold you to it for next week. Nelson, environmental commission report?

MR. RUSSELL: No.

MR. WEISS: Ordinance committee Jim is not here. Street naming committee I have nothing, Open Space committee?

MR. WALSH: Let's move it to next week.

MR. WEISS: Fine that's the end of our committee reports. Do we have any kind of legal report, engineering report, planning report?

MR. BUZAK: No.

MR. BUCZYNSKI: No.

MR. MCGROARTY: No.

MR. WEISS: Township news?

MRS. NATAFALUSY: Just one thing, you know I've not heard back from the environmental commission so Nelson can you check with Jim Smith on the Highlands Resource Inventory that he's supposed to get something back to us?

MR. RUSSELL: Okay.

MRS. NATAFALUSY: Okay I sent him an email on . . .

MR. WEISS: I saw that.

MRS. NATAFALUSY: Yeah so if you can just . . . we need something from the environmental commission. Thank you.

MR. WEISS: Okay so before we get into our lone developmental matter I know Mr. Fleischner asked to have a quick discussion on an issue. So Joe I'll turn it over to you.

MR. FLEISCHNER: CVS parking lot in Budd Lake. It's a disaster area with the flow of traffic and I'd like to have Gene discuss what he thinks we might be able to do to correct the situation of cars turning in off of Woodsedge.

MR. BUCZYNSKI: Let me try to explain to you, when you come off of Woodsedge there's two rows of parking. If you take you're left to go into the parking lot and you've got to go around to get to more spaces in front of the building. The front of the building that faces Woodsedge, if you park your car

there and you try and come out to go towards Woodsedge it's a no right turn because it was designed and approved as a one-way for the drive-thru window. So you're kind of stuck to go all the way around the building and come out onto Route 46. So it's caused problems for people coming at that intersection and wanting to go right to get back onto Woodsedge. A lot of people do that because they'll either go into the development at Woodsedge or they want to go to the light. Now I just want to verify that that drive-thru, that that portion of the access road for a drive-thru is wide enough which I think it is and Joe said he paced it he thought it was. What we can do very simply is take out the right turn only sign that's sitting right there . . . .

MR. WEISS: No you take out the no right turn.

MR. BUCZYNSKI: No right turn sign. What did I say?

MR. WEISS: You said take out the right turn only sign.

MR. BUCZYNSKI: Oh the no right turn only. The no right turn only sign and the arrow, just paint out the arrow and people would just go whichever way they want to go when they come to that intersection at the access drive. It's kind of simple I just got to get a hold of the engineer to get the developer to agree to it and have their contractor who's gone just to come back and take that sign out. Or we have to pull it out or something.

MR. MCGROARTY: Do we have to amend the site plan to do that?

MR. BUCZYNSKI: Well . . . .

MR. MCGROARTY: What if somebody has an accident out there and the site plan shows no right turn on the plan.

MR. BUCZYNSKI: You can ask Scott about that because we were talking about what to do there too. I mean right now there's no Title 39 through there but still even though it's not 39 it's still probably a liability on site if we did that.

MR. WEISS: Do you know maybe Ed if it's a question if it becomes Title 39 does it take the Township off the hook?

MR. BUZAK: No because Title 39 the Township regulates what happens there.

MR. WEISS: That's what I meant . . . I really I meant to say well said was does the Police enforcement where they say no right turn is okay become enough?

MR. BUZAK: No what happens is to have Title 39 apply the applicant has to submit a plan that shows all of the internal directions and whatever and that's adopted by ordinance by reference by the municipality and that becomes the governing document. So that ordinance would have to be amendment, or the plan would have to be amended and the ordinance amended to now incorporate the plan that does not show that.

MR. BUCZYNSKI: There's a lot of times we ask them for it during site plan review, the Planning Board but we didn't ask for that in this case. But I guess the question comes up Ed would that be a problem if we did that without coming in for revised site plan?

MR. BUZAK: To eliminate a no right turn sign?

MR. BUCZYNSKI: Yeah. You know Chuck brought up the point if somebody having an accident there.

MR. BUZAK: Well I think there would be some potential liability.

MR. BUCZYNSKI: Well how about if they do have an access the way it is right now and it's a plan that the town approved?

MR. BUZAK: Well that we have . . . .

MR. MCGROARTY: Why would they have an access?

MR. FLEISCHNER: Well I saw two near misses; one guy actually tapped somebody else's bumper.

MR. MCGROARTY: Why?

MR. FLEISCHNER: Because if all of a sudden the parking lot was full and people are trying to get out and you can't make a right turn. So people got there and got confused, well I want to get out on Woodsedge and they can't.

MR. MCGROARTY: Well no but I'm not arguing it but I'm just saying that the person who bumped the other person or whatever happened was he going the wrong way? Was he trying to make a right where he shouldn't?

MR. FLEISCHNER: No all of a sudden like four cars backed up right at that one spot because they didn't know where to go.

MR. BUCZYNSKI: But when I talked to Scott about it my thought was Joe you didn't like the answer that much but my thought was they did it once the next time they use the parking lot they'll know how to get out they have to go around . . . .

MRS. NATAFALUSY: Go around the building.

MR. BUCZYNSKI: Don't have to go around the building they just have to . . . .

MR. WEISS: Park on the Woodsedge side.

MR. BUCZYNSKI: Well no you can still just come around on Woodsedge as long as you're on that first row you can get out on Woodsedge. You can't get out if you're in the second row.

MR. FLEISCHNER: But does that really make sense?

MR. MCGROARTY: Well no I'm not arguing . . . . again I'm just saying I'm not sure you want to just . . . you know the question is who wants to take the authority to tell them to change something that was on an approved site plan and then if something happens . . . . I mean if this Board does it that's one thing but . . .

MR. FLEISCHNER: What I'm thinking is we should approach them because the people in the store, when I went in the store I said do you realize the mess? They said that's the way they approved it.

MR. BUCZYNSKI: Who said that the Manager?

MR. FLEISCHNER: Yeah the lady who's the Manager said that's the way it got approved and she kind of threw her hands up like that.

MR. BUCZYNSKI: I guess how do we do it, who makes that decision to take the sign out?

MR. FLEISCHNER: Well I think maybe if we could like you suggested if you approach the engineer who designed that and say are you comfortable with the way it is because we've raised it.

MR. MCGROARTY: Joe the problem I think with that is your taking an approved site plan and I would think the Board would make that decision don't you think? Because if the client's engineer, CVS's engineer or for that matter Gene doesn't you know they're taking away a traffic circulation . . . .

MR. FLEISCHNER: But that's what I'm saying let's ask their engineer what he thinks of the current situation.

MR. BUCZYNSKI: The question is they would have to get CVS to agree to come back for an application for amended site plan.

MR. FLEISCHNER: Right and if we do and if CVS feels like it's really that important then maybe they come back and they do it.

MR. BUCZYNSKI: What I would do I would call up their engineer and tell him what the concern is and see if he can speak to CVS to see if they also agree to there's a problem they might say they'll come back and take care of it.

MR. FLEISCHNER: Yeah they may be happy because they know they have an issue there and they'll come back to the Board and amend it.

MR. BUCZYNSKI: I think I'll have an answer for you next week.

MR. FLEISCHNER: Okay that's all I'm asking thank you.

MR. WEISS: Before we move onto our first development matter does anybody else have any comments or questions? Sure Mr. Walsh go right ahead.

MR. WALSH: In relation to this I've had a few of the neighborhood folks who live on Woodsedge ask me about, because of the new CVS, would we be able to put some speed bumps or tables coming down that hill. Because they have kids and people kind of fly down that hill. I'm just asking the question I don't know if it's a good idea, bad idea or what. I mean what would . . . how would we determine whether it should be down or shouldn't?

MR. BUCZYNSKI: I don't like speed bumps on municipal streets myself but we can speak to Scott about that particular one. But with the steepness of that grade that would be another reason why I would not want a speed bump.

MR. WALSH: I see, okay.

MR. WEISS: Besides for that Pat being a Councilman has any other residents complained to you about parking or circulation problem at the CVS?

MR. WALSH: No I haven't heard, no.

MR. WEISS: Okay.

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**APPLICATION #PB 11-32 – IDELPHONSE TCHIAKPE**

MR. WEISS: Okay let us introduce our first developmental matter for tonight which is PB 11-32 Mr. Tchiakpe. It's a modification of condition of approval for the building option plan to maintain the patio located at 1 Winding Hill Drive which is Block 8430, Lot 67. This evening Mr. Kevin Hahn on behalf of Mr. Tchiakpe, gentlemen welcome again.

MR. HAHN: Good evening Mr. Chairman, members of the Board as you know I'm Kevin Hahn from Courter, Kobert & Cohen I represent the applicant Mr. Tchiakpe in this application. And I guess the first order of business since we're on the agenda as a modification to a condition. Mr. Buzak and I had some correspondence about this before the meeting and I specifically indicated that I didn't believe that we could come in here with an application for a modification to a condition for a variety of reasons. And that we were here as our application states for either a zoning permit, basically you know with the argument that the zoning office should have issued a zoning permit when one was requested and failed to do so. So that we're either entitled to a zoning permit or we're entitled to a variance. The concept of the variance is found, and by the way if we could does everybody have the book that I submitted by now? Has that been distributed?

MR. WEISS: That's not distributed to the Planning Board members just the professionals have that.

MR. HAHN: Oh, because I submitted sufficient copies for everyone to have one I submitted ten copies.

MRS. NATAFALUSY: I've got three, well I've got the ones I had for the Board members, this was an extra one and I have one for the file that's all I have.

MR. HAHN: Well my paralegal was supposed to submit sufficient copies I thought she did. In any event I wanted to mark this because it has all of the exhibits attached to it that we're going to be referring to throughout the evening and I thought it would be helpful if each Board member had a copy in front of them.

MR. WEISS: I can share with Ed if you want me to.

MRS. NATAFALUSY: Okay do you want to pass that down and they can share.

MR. HAHN: In any event just by way of opening statement if you will, the concept of the variance was first introduced to Mr. Tchiakpe. Putting aside his initial application for a deck which he was also told that he would need a variance for that. But in my Exhibit S the December 11, 2007 letter from Frank Wilpert the Zoning Officer after the patio was installed as you'll hear tonight during the testimony the patio was installed in the fall of 2005.

MR. WEISS: What's the date of that letter Mr. Hahn?

MR. HAHN: December 11, 2007 Mr. Wilpert wrote to my client and told him that the patio appeared to encroach on the 50 foot rear yard setback and that he would need a "c" variance from the Zoning Board of Adjustment in order to maintain it. There was also the earlier letter from Ms. Natafalusy which is dated I believe August 22, 2005 when he applied for the deck.

MR. BUZAK: What exhibit is that Mr. Hahn?

MR. HAHN: It's Exhibit G and he was told in that letter that the deck which has already been approved by the way by the Homeowner Association at that point and that correspondence . . . .

MR. WEISS: There's nothing in G.

MR. BUZAK: It's before G.

MR. WEISS: Oh I'm sorry August 22, 2005.

MR. HAHN: August 22, 2005 after my client had received approval from the Association for the construction of a deck 10 feet by 25 feet. He applied for the zoning permit, the application is attached here as well and he was told in a letter again that the deck would encroach on the 50 foot restricted rear yard setback and that he would need to file an application for a variance. And then also in the resolutions 02-06 and the most recent resolution of 11-10 where this issue came up the concept of any particular homeowner would have the right to apply for a variance to the applicable Board you know, etc. So the concept of variance is in various documents that if anyone wanted to deviate from this so called Building Option Plan that they would need a variance.

MR. BUZAK: Is your application Mr. Hahn an application for a variance from the provisions of the Building Option Plan?

MR. HAHN: No it's not.

MR. BUZAK: Okay tell us what . . . you talk generically about a variance in your application in the booklet says you are seeking a variance from Section 400-100K(4)(d)(4) is that why your seeking a variance?

MR. HAHN: Going back to Mr. Wilpert's December 11, 2007 correspondence he said we would need a "c" variance to maintain the patio because the patio encroached on the 50 foot rear yard setback. That's the variance.

MR. BUZAK: So is that your application tonight? A variance . . . .

MR. HAHN: If the Board determines that we need such a variance. It's my opinion as you know that we do not. That first of all in this zone is you go to your zoning ordinance Section 400-100K(4)(d)(1)(d) states the rear yard setback for this zone for the R-5ML zone is 25 feet. In addition, in 2004 after the Planning Board granted approval, final subdivision approval for the section of the development Woodfield development that my client's home is located in which was in 2002. In 2004 the governing body of Mt. Olive amended this ordinance to add a D-4 section which says decks attached to the rear wall of the dwelling unit in accordance with the following standards. Which say 4(a) maintain a minimum distance of 15 feet to an adjacent building or structure attached thereto; or 10 feet to the closest property boundary of the subject lot whichever is less. So this ordinance is 2004 was amended to provide a 10 foot setback . . .

MR. BUZAK: For decks.

MR. HAHN: For decks which my client . . . .

MR. BUZAK: Did not . . .

MR. HAHN: In August of 2005 my client applied for a deck and he was told my Ms. Natafalusy that he couldn't have the deck, his zoning permit was denied because she said it encroached on the 50 foot setback.

MR. BUZAK: So you applied . . . .

MR. HAHN: What I'm maintaining . . .

MR. BUZAK: Are you appealing that decision?

MR. HAHN: No, if you let me finish I think it's important for the Board to understand the history of this because it's important to understand that my client is not the typical citizen who just goes out and builds what he wants irrespective of what the law is and what the regulations are. This man at every turn tried to comply with the local zoning ordinances and the requirements of the Association. He never thumbed his nose at the process and he never shirked his responsibility to try and comply. That's I think important for everyone to know. Secondly I think it's important for everyone to know that had his deck been approved in 2005 as I submit that it should have been we wouldn't be here tonight. Because there was no 50 foot yard, a 50 foot setback a rear yard setback for this zone. Because under your zoning in 2004 with respect to decks it was amended to 10 feet which by the way is consistent with resolution 02-06 which approved, finally approved his section of the development. I presume the governing body amended the ordinance to be consistent with your prior resolution which adopted this 15 foot, 10 foot requirement with respect to decks.

MR. WEISS: Mr. Hahn for the record does Mr. Tchiakpe have a deck now?

MR. HAHN: No but here is my point, so he doesn't build a deck he builds a patio. Now he's being told by Mr. Wilpert that the patio encroaches on the 50 foot setback. We maintain under this ordinance, this ordinance doesn't say anything about setbacks for patios; it doesn't deal with patios at all. Resolution 02-06 that approved this subdivision does not address patios at all it talks about decks. I and my engineer have gone through the Mt. Olive Code of ordinance; there are no patio restrictions that I could find in any of the ordinances of the Township of Mt. Olive. It is our position therefore that at the very least the setbacks adopted for decks the 15 feet and the 10 feet should also apply to patios that are constructed in this zone. Therefore we believe that the patio entitled to a zoning permit and is not required to receive a variance because it supposedly encroaches on the 50 foot setback. That's our application. For a variance if the 50 foot setback is held to apply, which I don't know where it comes from because, the ordinance talks about 25 feet, or in the alternative for a zoning permit. That's our application.

MR. BUZAK: What is the basis for this Planning Board to grant a zoning permit? Can you point me to a section of the MLUL that gives this Board the jurisdiction to grant a zoning permit?

MR. HAHN: No I can't.

MR. BUZAK: Okay so I suggest to this Board that . . . .

MR. HAHN: But my client has been summoned for building a patio without a zoning permit.

MR. WEISS: Hold on Mr. Hahn we're getting advice from our attorney.

MR. HAHN: Okay.

MR. WEISS: Go ahead Ed.

MR. BUZAK: Thank you Mr. Chairman. In light of the fact that the applicant has conceded that this Board, there's nothing in the Municipal Land Use Law that grants this Board the jurisdiction to issue a zoning permit. And I concur with that evaluation and that opinion. I submit that this Board not considers at all the question of the issuance of a zoning permit. You don't have the jurisdiction, the applicant's attorney has agreed with that, has conceded that I agree with him and therefore we should drop that issue from this Board's consideration this evening.

MR. HAHN: Okay will your attorney also then be notifying the Zoning Officer who issued a summons against my client for building the patio without a zoning permit, that such a zoning permit was not required?

MR. BUZAK: No I didn't say a zoning permit is not required Mr. Hahn what I said and what you said was that this Board, this Board does not have the jurisdiction to grant a zoning permit. You've applied to this Board for a zoning permit, one of the requests that you're making.

MR. HAHN: Well an interpretation it's in the form of an appeal that Mr. Wilpert was incorrect when he said that we weren't entitled to a zoning permit and that I think the Board can overturn his decision and direct him to issue the building permit. You wouldn't issue the building permit, he issues the . . .

MR. BUZAK: Where is your application for an appeal of Mr. Wilpert's denial of a zoning permit from 2007?

MR. HAHN: A-1.

MR. BUZAK: Okay so four years later you filed an appeal of the determination of Mr. Wilpert to not issue a zoning permit. Is that your application here?

MR. HAHN: Or the alternative for a variance, that he said we need a variance.

MR. BUZAK: That's not what your application that . . .

MR. HAHN: We haven't been sitting around for four years as you know.

MR. BUZAK: That's not what your application is before the Board tonight.

MR. HAHN: Well I disagree with you and . . .

MR. BUZAK: Well tell me where in your application . . .

MR. HAHN: I'll amend it accordingly I'll amend my application, if you're saying that I've got to go back and refill out another application then I'll do that. But as far as I'm concerned that's our application.

MR. BUZAK: Well show this Board where in your application that you filed an appeal from the determination of the zoning officer.

MR. HAHN: Well on the second page we cite identify variances requested. Zoning permit may be issue in lieu of variance.

MR. BUZAK: Correct.

MR. HAHN: Description of proposed improvement, an existing paver patio was constructed in 2005 within the setback requirements for decks. Resolution 02-06 adopted indicates a developer agreed to include a provision, whatever it goes on, by the homeowner to apply for a variance regarding construction of a deck. Applicant's deed . . . well that had to with notice and then on the next page we talk about if the applicant's patio complies with the setback requirements in his zone there is no requirements set forth for patios but there is a requirement . . . but he was told by the Township Zoning Office that he needs a variance to maintain the patio. If the patio was constructed within the setback parameters a decision . . .

MR. BUZAK: Where did you just read this, where he was told that . . . show me where you're reading that from Mr. Hahn.

MR. HAHN: Page five of my application under justification for variance. He was told by the Township Zoning Officer that he needs a variance to maintain the patio (see attached description and list of exhibits to be presented). Explain in detail, the patio was constructed within the parameters applicable to decks in this zone. A decision requiring the applicant to reconfigure or demolish would cause substantial detriment to the applicant especially under the circumstances, you know and then it goes on to explain.

MR. BUZAK: So because you say in an explanation that your client was told by the zoning officer that he needs a variance to maintain a patio that's your application, that's your appeal.

MR. HAHN: Yeah. Yeah he said we weren't entitled to a zoning permit and we disagree with him that's why we're here. And I put all of the documentation including his letters . . .

MR. BEDELL: Mr. Chairman?

MR. WEISS: Steve.

MR. BEDELL: Just to make sure I follow, I don't have the complete pack in front of me I'm just trying to skim here. So an application was put in for a deck it was denied for the setback provisions.

MR. HAHN: Right.

MR. BEDELL: Whatever the dimensions of the deck were I guess it would have been . . .

MR. HAHN: 10 by 25.

MR. BEDELL: Okay so it would have been raised on I guess above ground.

MR. HAHN: Right.

MR. BEDELL: So you pretty much put the exact same size patio on the ground. The exact same dimensions or is the patio built was it bigger than the proposed deck or is it the exact same size?

MR. HAHN: No it's bigger.

MR. BEDELL: Okay. So you were denied the deck which was a smaller size deck but chose to build a bigger patio.

MR. HAHN: Because my client asked the township, Ms. Natafalusy to be specific if he needed a building permit to construct a patio and he was told that he did not.

MRS. NATAFALUSY: Excuse me I didn't hear what you said. Your client asked who?

MR. HAHN: Asked you if he needed a building permit to build a patio and he was told that he did not.

MRS. NATAFALUSY: No he didn't ask me. No for the record he did not ask me. Everybody gets zoning permits for patios okay you still need to get a zoning permit for a patio.

MR. HAHN: Right which he was not told it was his misunderstanding.

MR. WEISS: But Catherine I've got to imagine that you're not verbally approving or unapproving requests like this ever.

MRS. NATAFALUSY: No if somebody comes in and says do you need a permit I say you need a zoning permit for a patio and then you go to the Construction Code Official and find out what you need from him.

MR. WEISS: I think what's happening . . . oh go ahead Nelson.

MR. RUSSELL: Isn't that a new requirement?

MRS. NATAFALUSY: No everybody gets zoning permits for patios. As long as I've been . . .

MR. RUSSELL: Until the recent law was changed to define patios, patios weren't mentioned in the Municipal Code.

MRS. NATAFALUSY: I don't know Nelson I can just tell you as long as I have been here we have been issuing zoning permits for patios.

MR. HAHN: Right but that's my argument to I agree with Mr. Russell there was no requirement, there was no zoning ordinance that dealt with patios in 2005. Therefore you didn't need a zoning permit.

MR. WEISS: Well here's a problem that I'm seeing.

MR. HAHN: You don't need a zoning permit to . . .

MR. WEISS: Following along with what your saying is that apparently its four to five years after Mr. Wilpert's determination that he needed a variance and now you're coming to appeal that decision.

MR. HAHN: Right.

MR. WEISS: Four to five years later and I don't believe that you have the legal right to do that four to five years later and I have asked my attorney to look that up. I don't know if you were able to find an answer.

MR. HAHN: But during that time . . . .

MR. BUZAK: Mr. Chairman the section which is in the Municipal Land Use Law 40-55D72 says appeals to the Board of Adjustment and we are a joint Board so it covers us, appeals to the Board of Adjustment may be taken by any interested party affected by any decision of an Administrative Officer of the municipality based on or made in the enforcement of a zoning ordinance or official map. Such appeal shall be taken within 20 days by filing a notice of an appeal with the office from whom the appeal is taken specifying the ground of such appeal. The office of from whom the appeal is taken shall immediately transmit to the Board all papers constituting a record upon which the action appealed from was taken. So if this application is for an appeal of Mr. Wilpert's determination that a variance was needed his interpretation of the zoning ordinance the application is woefully late and out of time.

MR. WEISS: Joe please go ahead.

MR. FLEISCHNER: Do we have an ordinance and at what date did it go into effect that said you have to have a permit for a patio.

MR. BUZAK: I don't know the answer to that.

MR. FLEISCHNER: I mean just to clarify in my mind. Because I know in 1974 when I built my house you did not need a permit to put in a patio.

MR. WEISS: But aren't we forgetting something that seems to be bigger than other parts of this township which is the Building Option Plan? Are we . . . .

MR. BUZAK: We will I mean I'm trying to do this piece by piece.

MR. WEISS: That has to factor into this too.

MR. HAHN: It will.

MR. WEISS: Okay only because that's kind of fresh on our minds so . . .

MR. BUZAK: Well again let me go back and I apologize . . . .

MRS. NATAFALUSY: Excuse me, if you look at 400-23 zoning permits it talks no zoning permit, building permit or certificate of occupancy shall be issued for any parcels of land or structure which was sold or . . . . then it goes on to say no site improvements such as but limited excavation of construction of public or private improvements shall be commenced except in conformance with this chapter. You need a zoning permit, site improvements.

MR. FLEISCHNER: And what date does . . . .

MRS. NATAFALUSY: It's the zoning ordinance it doesn't have any date 400-23 this is . . . .

MR. HAHN: But patios weren't in there in 2005.

MRS. NATAFALUSY: This ordinance has been in effect it hasn't been revised since 2005.

MR. HAHN: But I'm saying there's no ordinance that dealt with patios specifically.

MR. MCGROARTY: Well a patio is a structure.

MRS. NATAFALUSY: It's structure it's improvements, site improvements.

MR. WALSH: So if I may. It doesn't specify a patio as a structure.

MR. WEISS: I think we need to stay focused. Steve, Dan I think we need to stay focused Mr. Hahn has asked us for . . . he's asking for an appeal of the decision by Mr. Wilpert. I know we're getting distracted we're going off on sidebars but I sat here and I heard it that's your reason for being here. Your appealing Mr. Wilpert's decision otherwise I'm . . .

MR. HAHN: Indirectly.

MR. WEISS: Okay but we've yet to hear exactly why you're here. Mr. Buzak explained to this Board that we don't have the authority to issue a zoning permit so it came back to you. So exactly why you're here, and you ultimately said you're here because you want to appeal the decision of Mr. Wilpert.

MR. HAHN: Or get a variance.

MR. BUZAK: All right so let's . . .

MR. WEISS: Right one at a time. So you're asking for an appeal I had heard the statute that says you can't so I throw it back to you and I think the Planning Board needs to stay focused on what is the issue. I'll leave it up to Mr. Hahn he's asking for an appeal . . .

MR. HAHN: Right I'm saying we're either entitled to a zoning permit to maintain the patio or we're entitled to a variance. At the end of the day . . .

MR. BUZAK: And let's get back to this Mr. Hahn you said, can I have . . .

MR. WEISS: Sure Mr. Buzak go ahead.

MR. BUZAK: I asked you whether there was authority in the Municipal Land Use Law for this Board to issue a zoning permit. You answered that there is no such authority in the Municipal Land Use Law. I agree with you and advise this Board that they do not have jurisdiction to issue a zoning permit so you cannot consider the request it's a nice request but the Board has no jurisdiction to consider it. Mr. Hahn then responded and said after some interim discussion that he was appealing the determination of the Zoning Officer Mr. Wilpert from 2007. In response to the Chairman I pointed out that the Municipal Land Use Law says if you were going to appeal a determination of the Zoning Officer you need to bring that to the Zoning Officer within 20 days. The decision of Mr. Wilpert was back in 2007 as I recall Exhibit S which was five years ago or almost five years ago. So the application is woefully out of time and candidly when you look at the application that was filed with Ms. Natafalusy and with this Board there is no request appealing that determination. So therefore this Board cannot consider . . . . you don't walk into a Board and at the hearing decide what you are going to be appealing. So A) it's not in the application so therefore it's not before you, but B) even if in some oblique way Mr. Hahn intended it to be in this application it is five years too late. So therefore this Board with regard to that request does not have jurisdiction to handle this matter, that part of it. So I think, I would hope that this Board's determination and I would recommend but it's the Board's determination not mine that A) you do not have jurisdiction to issue a zoning permit and that you concur with that and will not entertain an application to do so; and B) that the application does not make a request for an appeal of the zoning officer's determination in 2007. And even in the best case if it did it is almost five years out of time. If the Board concurs with that then we can move on to see what other applications we have.

MR. WALSH: One little question just on that I apologize. Isn't the appeal, I mean you say five years later, or four years later when did the summons come?

MR. HAHN: The summons was issued in I believe it was March of 2008. And by the way for the record we fully intended and we had a survey prepared to file an application back in February,

March of 2008 and we were told again by Ms. Natafalusy that we couldn't file any application for a variance because the Board wasn't entertaining those, that there was this so called moratorium or whatever and that the Board wasn't going to hear any such applications until the Building Option Plan was revised. And that's why for the last four years we've been working with the Homeowner's Association trying to get the Building Option Plan revised so that we could maintain the patio and we all know how that turned out a few months back. So it wasn't like we weren't doing anything we tried to deal with this immediately and my office has been handling this since I was retained back in I guess early 2008.

MR. WEISS: I just need to say something Mr. Hahn and I think you're going to need to stop saying what Mrs. Natafalusy said because I know Mrs. Natafalusy many years and she's as good of a student of Land Use as anybody and for her to say or for you to assume that she is saying that there's a moratorium on issuing variances is an extremely ignorant comment and I would never once believe that Mrs. Natafalusy would say such a thing. So unless you have a letter . . . .

MR. HAHN: Well it's in my papers . . . .

MR. WEISS: Mr. Hahn unless you have a letter I expect you're to not say those kind of things.

MR. HAHN: Well we were told the application would not be accepted.

MR. WEISS: Unless you have a letter saying that it is . . . . I do not want to hear that again.

MR. HAHN: I think I might have a letter I'll dig it out.

MR. WEISS: And if you do that's a different story.

MR. HAHN: We were told the application would not be accepted.

MR. BUZAK: But let me again Mr. Chairman and members of the Board Mr. Hahn is referring to an alleged statement that the Board is not considering variances, that is what he said. The issue to which I was referring and the issue on which I gave you the advice is not about a variance it's about an appeal of the zoning officer's determination. Once again I ask the Chairman to ask the Board whether they concur in both of those so that we can move on and focus on what we need to focus on in this application.

MR. WEISS: So that being said does anybody have a question about the first two requests that were made of Mr. Hahn and rebutted by Mr. Buzak? Anybody disagree or feel otherwise? So that being said I think . . . .

MR. BUZAK: And the record should reflect since it's not going to reflect the failure of the Board to respond otherwise I would just ask that if the Board agrees that A) . . . . and take a vote agrees that the Board does not have jurisdiction to issue a zoning permit and that the application is not an appeal of the zoning officer's determination. And if it were an appeal if somehow obliquely it can be interpreted to be an appeal that that appeal is out of time.

MR. WEISS: So in this case I'll ask Catherine for a roll call a yes vote would mean that you agree with the attorney that we don't have jurisdiction to issue a zoning permit, and that an appeal is well past it's time. Nelson?

MR. RUSSELL: If the appeal had been done within the 20 days and the finding was that the zoning officer was wrong what action . . . we can't issue a zoning permit.

MR. BUZAK: Correct it would reverse the determination of the zoning officer and then the zoning officer would issue a permit.

MR. RUSSELL: Okay so we do have a jurisdiction but obliquely.

MR. BUZAK: We don't have the jurisdiction to issue a zoning permit, we have an issue we have jurisdiction to consider an appeal of a zoning officer's determination.

MR. RUSSELL: And to order the zoning officer to issue the permit.

MR. BUZAK: Well to reverse his determination.

MR. BEDELL: If it was done within the 20 days.

MR. BUZAK: The effect of it is the same yes.

MR. WEISS: But you preference that with an "if", "if" it was.

MR. RUSSELL: Well yeah it was an "if".

MR. WEISS: Okay so obviously let's go with the roll call for the first issue. The Planning Board has no jurisdiction to issue a permit. Catherine roll call, a yes vote means you agree with the attorney.

MRS. NATAFALUSY:	Joe Fleischner	- yes
	Dan Nelsen	- yes
	Nelson Russell	- yes
	Pat Walsh	- yes
	Steve Bedell	- yes
	Howie Weiss	- yes

MR. WEISS: Then the second issue we'll do it the same way the attorney has given us advice that the appeal is outdated that the applicant had 20 days and that it's four to five years later and we can no longer appeal the determination by the zoning officer.

MR. BUZAK: And that the application does not seek that appeal.

MR. WEISS: Okay do we understand that? We need a motion on that.

MR. BEDELL: I'll make that motion.

MR. RUSSELL: I'll second it.

MR. WEISS: Question?

MR. FLEISCHNER: Question then what does the application request?

MR. BUZAK: Well we'll get to that.

MR. FLEISCHNER: Wait, wait, wait I can't vote on this unless I know what the application then is for. How can I vote on it saying that that's the application if I don't know what the application is for.

MR. BUZAK: Well because the applicant's attorney has said to this Board that this application is an appeal of the zoning officer's determination. That's what he said.

MR. FLEISCHNER: I thought he said both that's what I heard.

MR. HAHN: I did.

MR. BUZAK: Both what?

MR. FLEISCHNER: For a variance or an appeal.

MR. BUZAK: We're only dealing Mr. Fleischner with the issue of the . . . .

MR. FLEISCHNER: Maybe it's just the way the motion was worded.

MR. BUZAK: Well then someone else can make the motion that's fine.

MR. WEISS: Well I clearly heard I made a note that Mr. Hahn said or he'll request a variance. And I'm not going to tell Mr. Hahn or suggest where he's going to go next. But we're trying to rule out those things that we can and can't agree on. So Mr. Buzak explain to us the conditions and the situation of an appeal. And the motion is made or requested that we agree with the attorney's determination that we're past the point of expiration for an appeal of a decision.

MR. BUZAK: But that the application was not an appeal. Both of those points.

MR. HAHN: Would that also be applied to an interpretation?

MR. WEISS: Interpretation of what?

MR. BUZAK: Well let's deal, Mr. Hahn will have the opportunity to tell us what this application is we're not foreclosing that we're dealing with as he tells us what this application is we're dealing with each of those issues. So we're not foreclosing Mr. Hahn from continuing.

MR. WEISS: Okay we have a motion and we have a second any other questions? An affirmative vote is an agreement with the determination of the recommendation of the attorney. Catherine?

MRS. NATAFALUSY: That the appeal is outdated.

MR. BUZAK: Outdated and that the application was not an appeal of that determination.

MRS. NATAFALUSY: That it was not included in this application package.

MR. BUZAK: Correct.

MRS. NATAFALUSY: Joe Fleischner - yes  
Dan Nelsen - yes  
Nelson Russell - yes  
Pat Walsh - no  
Steve Bedell - yes  
Howie Weiss - yes

MR. WEISS: Okay so then we're going to put these issues aside I'll turn it back to you Mr. Hahn.

MR. HAHN: Okay. So again we're here to try to resolve the problem. All right I mean I think everyone can recognize my client built a patio in 2005 because he thought he had the right to. Whether he was right, wrong or not is I guess irrelevant at this point he believed that he was doing the right thing. That he had complied with the Homeowner's Association requirements and he complied with whatever requirements imposed by the Township and he built the patio. Now there's a summons pending and there's all this other stuff that's going on and he's trying to resolve it. He spent a lot of money dealing with the Township, dealing with the Homeowner's Association trying to get this resolved and we've been working on it constantly since I was retained in late 2007, early 2008. We're here before the Board to try to resolve it. So whether you call it a variance, whether you call it a modification of a prior condition, whether you call it an interpretation of your zoning ordinances that the zoning officer was incorrect that we don't need a zoning . . . .

MR. WEISS: Mr. Hahn we worked past that already.

MR. HAHN: A zoning permit or we're . . . . .

MR. WEISS: I think you need a clear direction to . . . .

MR. HAHN: I'm calling it an interpretation now not an appeal. I think an interpretation might be a different application and would not have the same time requirements. Obviously our notice said that we're seeking the relief in the application as a catch all that every attorney puts in or such other relief as the Board determines is required as a matter of law. So I'm going to say to you my client would like to keep this patio on his property. What does he have to do in order to do that? What do we need to do to satisfy you that he has a right to maintain this patio? And I'm going to pass out, because the color pictures weren't ready when we submitted the booklet and we're going to mark this as A-2 if we can. This is a set of photographs . . . .

MR. WEISS: Okay I'm going to ask you again Mr. Hahn because . . . .

MRS. NATAFALUSY: What's A-1?

MR. HAHN: A-1 was my booklet.

MRS. NATAFALUSY: The booklet?

MR. HAHN: Yeah, yeah.

MRS. NATAFALUSY: Okay.

MR. WEISS: I don't think we need to mark that that's part of the application. Your booklet is part of the application.

MR. HAHN: No but it has exhibits attached to it which I'm going to put into evidence.

MR. WEISS: Okay so before we proceed with the photographs Mr. Hahn I need for you to be very clear as to what are we considering. Are you asking the Board . . . .

MR. HAHN: To consider my clients patio.

MR. WEISS: For a variance? You're still all over the place.

MR. HAHN: I'm not all over the place.

MR. WEISS: You are.

MR. HAHN: I was very clear when I was asked a question; I said a zoning permit and/or a variance.

MR. WEISS: You're asking the Planning Board to do something.

MR. HAHN: Right.

MR. WEISS: Okay what is it that you're asking us to do? Are you requesting a variance?

MR. HAHN: Yeah. Yes I am. If it's determined that I need one.

MR. BUZAK: No, no we don't make the determination . . . See Mr. Hahn that's the issue here the Board does not make the determination as to whether you need a variance or you don't need a variance.

MR. HAHN: Well you said . . . .

MR. BUZAK: Let me finish.

MR. HAHN: Yeah go ahead you finish you guys run the show. You tell me when you're done railroading me and then we'll get up and . . . .

MR. WEISS: Mr. Hahn let our attorney speak.

MR. HAHN: Okay go ahead you speak. He asks me questions and then he speaks. Go ahead.

MR. BUZAK: An applicant makes an application to this Board the Chairman has asked what is your application. If I understood your answer most recently it was an application for a variance if this Board determines that I need one. I said to you, this Board does not make a determinations as to whether you need a variance or you don't need a variance. This Board merely acts on an application for a variance that you've decided through other processes that do not involve this Board that you need a variance.

MR. HAHN: Wait a minute, it does involve this Board. Your resolutions both say that you need a variance if you want to deviate from the Building Option Plan. It does involve this Board those are resolutions that were passed by this Board.

MR. BUZAK: So you're asking for . . . .

MR. HAHN: Frank Wilpert's letter was written and said we need a variance okay? That's where I got the interpretation that we needed a variance.

MR. BUZAK: So are you seeking a variance . .

MR. HAHN: Yes.

MR. BUZAK: From what?

MR. HAHN: Well that's yet to be decided. We have to decide it I don't know.

MR. BUZAK: Do you think that when you decide it when you submit the application . . . .

MR. HAHN: Do I need a variance from a resolution? I don't think so.

MR. BUZAK: Well then what are you asking for?

MR. HAHN: I don't know what did the Board mean when it said in its resolutions that you need a variance if you want to deviate from the Building Option Plan which is not a law. Right, so I would submit to you as a matter of law you don't need a variance from that do you.

MR. BUZAK: Why are you here Mr. Hahn?

MR. HAHN: Well I'm here . . . I tried to explain that. I'm here because my client has a problem and we're trying to resolve it. The zoning officer said we had to come here and seek a "c" variance in order to resolve it. I did all this research and I laid it out and your resolutions say, your latest resolution says in two places that you need a variance.

MR. BUZAK: A variance from what?

MR. HAHN: I don't know you wrote the resolution why don't you tell me.

MR. BUZAK: Read the resolution Mr. Hahn and you can tell us.

MR. HAHN: The Board desired to clarify that individual property owners of the court homes subject to the Building Option Plan could apply for a variance from the requirements set forth in the modified Building Option Plan with the consent of the applicant's Homeowner's Association. That's what it said, it says variance.

MR. BUZAK: So are you making an application for a variance from the Building Option . . . the modified Building Option Plan as approved by this Board is that your application here?

MR. HAHN: Again if the Board determines that that's the way we can resolve this problem and my client is going to be able to maintain his patio then sure. But as a matter of law you and I both know the Building Option Plan is not a law and it's not a zoning ordinance therefore you don't need a variance from it. It's illegal to require a variance from this thing that was made up apparently between the Planning Board and the developer by some agreement that the Planning Board in my opinion had no authority to do to begin with. It's ultravires, it's not applicable to my client's property. It was never put in the record of the property it's not in his deed, it was never recorded, it's not a recorded instrument you know I have Supreme Court Case Law. If these restrictions, first of all the condition was inappropriate and ultravires, assuming the condition the ongoing condition the restriction that you claim applies to my client's property was supposed to be ongoing that it needs to be recorded in a legal document. Whether it's a deed or the public offering statement the covenants and restrictions of the Association it should have been recorded in there at the time he bought his unit so he'd be placed on notice of it. He was not, we never heard of this Building Option Plan until you were knee deep in this thing and then we all scratch our head and said what's a Building Option Plan? When you go the zoning ordinances of Mt. Olive Township it doesn't say a word about Building Option Plans. It's not defined, it's not mentioned, it's not codified anywhere. You go to the Municipal Land Use Act the Statutes of the State of New Jersey, what's a Building Option Plan? It's not recognized in there either, this concept was totally created by this Board and the prior developer. And it was set forth in a resolution which is not binding on my client. A subsequent property owner who purchases a property innocently and with no notice of these restrictions cannot be held to those standards. And those restrictions are not enforceable as to my client. So do I need a variance? I don't think I need a variance.

MR. BUZAK: Then Mr. Hahn there's nothing for this Board to act on. If you are not seeking a variance . . .

MR. HAHN: Well the Board says I need a variance so how do I solve the problem you tell me.

MR. BUZAK: Tell us what you're seeking. If you are seeking a . . . .

MR. HAHN: I told you what I'm seeking, my client is seeking to maintain his patio.

MR. BUZAK: Well and tell me where under the Land Use Law is there a provision that says that you can make an application to this Board for your client to maintain his patio.

MR. HAHN: There's not one but it's in your resolutions. You say we have to get a variance, and Frank Wilpert told us we need a variance.

MR. BUZAK: Are you seeking a variance from the Building Option Plan.

MR. HAHN: I'm not playing this game I told you what I was seeking. I've said it five times I'm not seeking a variance from the Building Option Plan because you know that that's legally not required.

MR. BUZAK: So tell us or answer the Chairman's question what you are seeking.

MR. HAHN: I'm seeking to deviate from the Building Option Plan. I'm seeking to have my client have the right to maintain his patio in his backyard that he's constructed.

MR. BUZAK: So therefore your application is a request to deviate from the Building Option Plan. Is that what your application is?

MR. HAHN: If you say so.

MR. BUZAK: No I don't say so Mr. Hahn it's your application you need to tell the Board . . .

MR. HAHN: Whatever would get me to the point where I can get a ruling from this Board whether or not my client can have his patio, yeah that's what I'm seeking.

MR. BUZAK: And tell us what that is Mr. Hahn.

MR. HAHN: He's seeking to maintain the patio because this concept of a Building Option Plan as I've already said is not binding on my client. My client, there is no restriction in the Mt. Olive Code against his maintaining this patio, there's no restriction in the Municipal Land Use Law for his . . .

MR. BUZAK: So if there's no restrictions and no . . . .

MR. HAHN: Can I finish?

MR. BUZAK: Prohibitions how can you . . . .

MR. HAHN: Mr. Weiss when I interrupted him you banged your gavel and you told me to shut up.

MR. WEISS: We're ready to listen Mr. Hahn go ahead let's stay focused.

MR. HAHN: I'm trying to stay focused I'm just asking if he not be allowed to interrupt me if I'm speaking.

MR. WEISS: I think Mr. Buzak has done a very fine job holding back so . . . .

MR. HAHN: Okay that's fine, all right. So I don't know what you guys want to hear, your resolutions say that you need a variance if you want to deviate, Mr. Buzak and I seem to be in agreement that the Building Option Plan is not a zoning ordinance so therefore you don't need a variance from it. So why the term variance was in the letters and the resolutions that my client received I have no idea. If he's saying it's a deviation we need, fine then we'll call it a deviation. So that's what we're seeking is a deviation.

MR. WEISS: Mr. Hahn I have a question for you. Let's try to simplify this Building Option Plan as it relates to your client.

MR. HAHN: Okay.

MR. WEISS: I'm asking the question out of a bit of nativity, I'm naïve to the question. Let's say the Homeowner's Association says to your client you can't have a spotlight on his home. Okay I'm trying to simplify it I live in a different type of living I can put a spotlight on my house anytime I'd like. So I don't have that restriction of the Homeowner's Association. But your client thinks that he wants a spotlight and he should have a spotlight and there's certainly nothing in the Land Use Law that says he can't have a spotlight. How is that disagreement resolved? How would something like that be resolved? Would it be through the Homeowner's Association?

MR. HAHN: I have no idea.

MR. WEISS: I don't know either and I'm asking that question because it sounds like without a request from a certain Statute a certain setback it sounds like there's a disagreement between your client and the Homeowner's Association.

MR. HAHN: No there's not. We went to the Homeowner's Association and tried to resolve it the letter is attached to my book. The Homeowner's Association wrote to us and said we can't resolve it because we've been told by the Township that they want the patio removed fully so it doesn't matter what we will agree to allow you to maintain there, the Township wants the patio removed. The letter is right here I can dig it out if you'd like to see it. So we were told by the Association also to come here because we went to Alternative Dispute Resolution and mediation with the Homeowner's Association and they said, they threw up their hands they said we were told by the town that you have to remove the patio there's nothing more we can do you have to go to the Township and if you get the Township's permission to maintain the patio then come back to us and we'll talk to you then. That's why we're here.

MR. WEISS: Is it your opinion then the Building Option Plan, and I'm looking at it and your client's lot according to this says you can't have a patio whatsoever. Are you suggesting that this Building Option Plan is totally baseless, totally illegal and is a waste of time?

MR. HAHN: Yes. Well I mean I wouldn't word it quite the way you are but it's not enforceable because it's not a law, it's not an ordinance and it was not properly adopted by the governing body. This Planning Board has no right or authority under the Municipal Land Use Act to regulate the future use of property that's already zoned by the governing body. That's the responsibility of the governing body is to regulate Land Use not the Planning Board. So the Planning Board, and that document that your referring to was never recorded, it was prepared by the developer's engineer it wasn't prepared by this Board, and if you go to your resolution 02-06 it only talks about decks. There's nothing in this resolution at all that says anything about restrictions about patios anywhere in the findings of fact or the conclusions of law that were adopted by this Board on November of 2002 there's absolutely nothing. It talks about deed restrictions for decks and the Building Option Plan relating to the construction of decks but it says nothing about patios whatsoever, patios are never addressed.

MR. WEISS: So let me then ask a question to my attorney, if we take Mr. Hahn's answer as gospel and truth does a Building Option Plan like this become part of the covenants or deed restrictions of the homes that are encompassed in this subdivision?

MR. BUZAK: Well typically what I don't know I have not researched whether it is part of those covenants and restrictions or not.

MR. HAHN: It's not. Unfortunately they didn't put it in there. So when my client got the public . . .

MR. FLEISCHNER: Wait, wait I'd like to listen to Mr. Buzak please.

MR. HAHN: Sorry.

MR. BUZAK: So I do not know whether it's part of their covenants and restrictions or not. From actions that the Homeowner's Association has taken they apparently are of the view that it is because they have enforced those in that development. I cannot tell you whether they are or they are not.

MR. WEISS: And so when we look at the original development of this plan maybe Chuck or Gene do you recall that this Building Option Plan was part of the original application and presented to the Board as conditions of that approval?

MR. MCGROARTY: Well I can tell you that it was at some point, and I don't remember when to be perfectly honest, but the site plan reflected decks or patios. The site plan that was approved by the Planning Board so as footprints on the . . .

MR. BUCZYNSKI: Showed patios and decks.

MR. MCGROARTY: That's correct and in some cases you could have both or you could . . . the plan might show both or in some places it showed only one and the size was specific it was on the plan it wasn't a note it was a graphic representation of what it would look like. Either a box or a parallelogram or some kind of . . .

MR. RUSSELL: It was 100 square feet for a deck.

MR. MCGROARTY: I'm sorry?

MR. RUSSELL: There's a note on the plans that decks were 100 square feet.

MR. MCGROARTY: Well some decks, I mean the shapes of decks varied and I don't know if they averaged out to 100 square feet I don't know. But I'd have to go back to the original site plan. But my response to the question was on the original site plan, on the preliminary site plan and on the final site plan in the phases it shows the decks or the patios.

MR. HAHN: And my engineer has gone through he has a copy of this Building Option Plan that was adopted back in I guess November 2002 but there's no rhyme or reason, there's no explanation as to why they went down and checked off patio for one or patio and deck for a particular home, or one of the other. There's no rhyme or reason it's not explained in any of the findings of the Board and as I said there's nothing in the resolution at all that talks about patios at all. And I can tell you I have scoured my clients Public Offering Statement, the Covenants and Restrictions, there is absolutely nothing in there that talks about patios, the size of patios, Building Option Plan, none of these terms are used at all. It's nowhere in there so when he bought the unit there was no notice to him that there was this so called condition or restriction that was somehow indirectly adopted by the Planning Board even though your resolution says nothing about a restriction being placed on patios. There's you know there's some reference to it in the plan but the plan was never adopted. It's never recorded it's just a . . .

MR. WEISS: So we don't know if the Building Option Plan is a deed restriction to the Woodfield subdivision. If it's a restriction that's unique to Woodfield, we don't know if that's part of the deed, if it's part of the . . .

MR. HAHN: Yeah I know I mean if you want to break and come back next month Mr. Buzak can research it if you want. I've researched it believe me I've been at this for four years.

MR. WEISS: I don't know if that's the angle I'm just trying to . . . yes Steve you had a question?

MR. BEDELL: I'll wait until your done that's okay.

MR. HAHN: I'm telling you it's not, it's not in there and that's why it struck us you know we were kind of blindsided when this came up when Catherine first mentioned, "oh you have to follow the Building Option Plan," we were like "what's a Building Option Plan?" And I went back through the ordinances I couldn't find reference to it anywhere and then we were told oh well there's a plan down here on file. But no one would know that, no one buying a unit would have any way of knowing that.

MR. WEISS: Go ahead Pat.

MR. WALSH: Thank you sir, thank you Mr. Chairman. So the summons that you received what was it that it was saying you were doing wrong?

MR. HAHN: For constructing the patio without a zoning permit.

MR. WALSH: Okay without a zoning permit. Now I think we've made it clear now we can't do zoning permits here so that would have to go through Frank. Okay now if he's saying that it's against, now is it somebody here help me, is it obvious that a zoning permit cannot be allowed because what is it about this patio that makes it so that a zoning permit would not be given?

MRS. NATAFALUSY: Because on the Building Option Plan this property shows a deck.

MR. WALSH: So on the Building Option Plan it would have to show a patio as part of the structure. Okay and then my last question here . . . .

MRS. NATAFALUSY: And the site plan. The final site plan shows a deck.

MR. WALSH: Okay and if I may when at some point somewhere we thought the deck would encroach into the 50 feet how far was it? If 50 feet was the setback requirement how far into the 50 foot would it have been?

MR. HAHN: There is a survey . . . .

MRS. NATAFALUSY: How far what would have been?

MR. WALSH: In other words at some point in this whole conversation somebody said . . . I'm kind of losing a little track, that it was within 50 foot. Was that deck, patio and how far?

MRS. NATAFALUSY: That was me that said that because on the site plan on Mr. Tchiakpe's survey it shows a 50 foot setback.

MR. WALSH: Gotcha. And how far into the 50 approximately is it?

MRS. NATAFALUSY: A deck when he originally came in for the deck.

MR. WALSH: Oh it was 12 feet into . . . .

MR. HAHN: The patio that I'm looking at it would be . . . because right now we still maintain its 38.4 feet from the property line at the back corner. And so if you ask about if it had to be 50 then we're 12 feet.

MR. WALSH: And how does this . . . is there a rule on that particular home site as far as how much area can be covered for water runoff?

MR. HAHN: Yes.

MR. WALSH: And how does this patio affect how close or far we are from that?

MR. HAHN: Thank you for asking. 40 percent I believe is the coverage requirement maximum and even with the patio my engineer can be sworn and testify to this he's calculated it we are at 35 percent.

MR. WEISS: I'd like to actually hold off on that.

MR. MCGROARTY: Let me clarify that.

MR. WEISS: Okay go ahead. Let Chuck answer it.

MR. MCGROARTY: This zone district has impervious coverage standards for the tract not for individual lots.

MR. WALSH: Oh I see.

MR. HAHN: I understand that.

MR. MCGROARTY: So it's not 40 percent for the lot.

MR. WALSH: I hear you but in this particular lots case . . . I hear what you're saying, I know exactly what you mean but in this particular home site you're about 35 percent impervious.

MR. HAHN: And if you want to know the numbers for the entire tract it's in your last resolution. Paragraph 5 page 3 deals with this issue because it came up last summer whenever you heard the application for the other modification. And it says the surveyor testified the overall building coverage for the entire tract was currently at that point at 13.46 percent whereas 20 percent was permitted. And that included, because at the time they did this my clients patio was already in existence and then it also said similarly with regard to impervious coverage the development now contains 34.5 percent impervious coverage whereas the ordinance allows 40 percent maximum. So even on the entire tract we were still well under the permitted numbers.

MR. WALSH: I hear you. And Mr. Hahn if I may if a variance was given by this Board to allow the patio would that be all that he needs? I don't know if that's a question you can answer Mr. Hahn.

MR. HAHN: I believe that would be all we would need sure.

MR. WEISS: I'm going to come back to that question. Steve you had a question?

MR. BEDELL: Yeah I think it's maybe more of a comment but you know we can go back and forth for the next hour and we're not going to get anything done tonight. I think the fact of the matter is the patio was built and it's been built for a number of years. Maybe if we let cooler heads prevail for the next couple of days, maybe on Monday, Tuesday the two attorneys can talk and try to figure out potentially what we could do to possibly offer a variance. Right now we're asking what kind of a variance . . .

MR. WEISS: Hold on a second Steve I've got to stop you because that's not up to the Planning Board to determine if there's a need for a variance. And that's kind of how I was going to sum it up and I do want to let you finish but ultimately I turn back to you Mr. Hahn you understand the way these Boards work. Mr. Buzak explained to the Board members you need to tell us why you're here are you requesting a variance you said yes, from what. And your response seems to be, you tell me.

MR. HAHN: Oh no I'm sorry if I gave you that impression . . .

MR. WEISS: Okay but I need you to give us direction what are we going to listen to. Are you requesting a variance for the setback? I don't want to tell you what you're requesting but you tell us.

MR. HAHN: Yes I think at the end of the day, right a finding that the . . . but if you find right that the 50 foot setback as I maintain does not apply to the patio then we don't need a variance right? But if you find that Mr. Wilpert was right that there is a 50 foot setback in this zone and that the patio encroaches then yes I need a bulk variance to maintain the patio because it encroaches the setback. Yes that's one of the things I will need.

MR. BUZAK: Now where is that Mr. Hahn in your application? A request for a variance from what?

MR. HAHN: Well all of the exhibits are incorporated by reference that's why I put them in there. It's in Mr. Wilpert's letter he says it and I also say existing patio was constructed within the setback requirements permitted for decks. The issue though is you're going to have to decide are the setback requirements for decks also applicable to patios or are they not.

MR. BUZAK: That's not for the Board to decide that's what I'm trying to get to Mr. Hahn. The Board doesn't decide whether the deck setbacks and side yards apply to patios, apply to some structure that you put up.

MR. HAHN: Oh really? Well in . . .

MR. BUZAK: Well let me finish Mr. Hahn.

MR. HAHN: Oh sure.

MR. BUZAK: That decision is made by the zoning officer. You want to put something up you seek a zoning permit as Mrs. Natafalusy has said. And the zoning officer makes the determination yes you need this, or you need that, you violate this or you violate that, and if an applicant then after the

zoning officer makes that determination disagrees with that determination he's got 20 days within which to challenge that or appeal that to this Board. So this Board doesn't make the determination as to whether the decks rear yard, side yard setback requirements are applicable to a patio that's not what this Board does. Someone else does that and you can either say yes that's fine I seek a variance because I accept the zoning officer's determination that this regulation applies. Or you don't accept it and you appeal it. And then if this Board sustains the zoning officer's determination and an application still disagrees with that he then goes to Court. And ultimately a Court decides whether or not that determination is valid. If the determination is found to be valid then the applicant is he wants to continue needs to seek a variance from that condition. If the Court finds that it is not applicable then there's no need for a variance and this Board doesn't act on anything because there's no application that it needs to consider.

MR. HAHN: But I disagree to the extent, the Board can interpret the law it's your obligation to interpret your own ordinances and you can make a determination whether we need a variance from a 50 foot setback or a 25 foot setback. The ordinance . . . .

MR. BUZAK: Well tell me where in the MLUL Mr. Hahn you see that.

MR. HAHN: The ordinance says 25 feet. Now also Mr. Buzak said you don't do that, well in 2002 this Board did do that. On page 2 of that ordinance 02-06 . . . .

MR. BUZAK: The resolution.

MR. HAHN: The resolution excuse me, because at the time if you recall my earlier statement the ordinance for R5-ML zone did not talk about decks or patios. And this Board said it is unclear exactly how decks should be classified under the Code of Mt. Olive. As accessory buildings attached to the primary building decks would need to conform with the required minimum distance between buildings which is 15 feet pursuant to 400-100(k), etc. The Board recognized that it is unclear whether the ordinance includes decks and therefore imposes the 15 foot distance between decks and adjacent buildings. Therefore the Board agreed to impose, and the applicant agreed to adhere to the restrictions set forth below and then it went on to talk about the 10 foot setback with respect to decks. So this Board even though the ordinance didn't address decks specifically and didn't have a requirement or standard for decks, came up with one that it then imposed. So the Board on occasion does do that stuff and it did do it back in . . . .

MR. WALSH: Mr. Chairman to simply things I would just like to make a motion that we approve a variance on this structure and patio to where it exists today and let's just see where the vote lands. I make that motion, we'd need a second I guess but I'm going to make that motion unless there's some law that says I can't.

MR. FLEISCHNER: I do have a question and this pertains to your motion. To accept a variance what variance are we accepting?

MR. WALSH: For the structure/patio to be approved as it stands right now or as it exists you know as part of the Building Option Plan make it a part of it and give him a variance . . . .

MR. RUSSELL: Variance from what?

MR. WALSH: Exactly.

MR. FLEISCHNER: From the 50 foot or is it 25 foot.

MR. BEDELL: See that's why (inaudible) that's why you know if it's a matter of Mr. Hahn sitting down with Mr. Wilpert and trying to find out this is what could possibly, I'm not saying it will pass, but this is what maybe you should come in this is what you need. Wouldn't that make sense? I can sit here and listen to the same conversation for the next two hours but it's not going to accomplish anything so . . . .

MR. WEISS: Well Chuck has an answer to your question.

MR. BEDELL: Wait a minute I just want to finish, but if they're given direction to say come in and you need to apply for this variance and then we can then listen to the motion and then at that point vote on it, personally I won't vote on it tonight because I don't know what I'm voting on but if they came

in and they were told this is what you need then we can proceed. But right now we're going to go back and forth for the next two hours.

MR. WEISS: Chuck.

MR. MCGROARTY: I don't have an answer to that and I know there's a motion on the table. I just want to say you know from the time I was here in Mt. Olive it was my understanding that because the site plan was approved by the Planning Board and then at some point the Building Option Plan came along and supplemented that. But on the site plan there were . . . because of the nature of this development and the size of the lots which were much smaller than the typical lots in Mt. Olive because it was such a big development a cluster development that you got either a deck or you got a patio. Or in some cases you got maybe the option of both or in some cases you didn't get either one because of a variety of different restrictions. I'm not sure from my point of view that it was so much a bulk issue in terms of how far back you were, although certainly you know that became an issue later as well when people started to enlarge the decks, but I always looked at it as you either had a patio or you had a deck. I mean this unit had a deck not a patio.

MR. FLEISCHNER: So therefore the variance would be to have a patio exceeding in a place where originally there was a deck and . . .

MR. MCGROARTY: Well if I may, if I may and again I'm just weighing in on the side here literally and figuratively, but I don't disagree with the position that look the footprint is on the site plan it's not in the zoning ordinance so you're not getting a variance from . . . perhaps people are seeking to deviate from what was approved on a site plan. That's not necessarily a variance situation so you don't grant a variance if in fact that's the case, you don't grant a variance from deviating from site plan you do something else perhaps to get the Board to agree to modify the site plan.

MR. FLEISCHNER: But the Homeowner's Association said he can't go back to them . . .

MR. MCGROARTY: Well they're not here tonight so I don't . . .

MR. FLEISCHNER: But they did when they were here.

MR. MCGROARTY: I don't know what they said. But that's a separate issue I think, that's a separate issue what they do or don't do. Whether it's a deck, a patio, a close line, a flag you know they do what they do but this Board does what it does. And I may be wrong but I'm thinking if the deviation from an approved site plan then the request of the Board is to reconsider the footprints that you or your predecessors approved on the site plan. I don't think it's a variance necessarily.

MR. WEISS: Gene?

MR. BUCZYNSKI: Yeah the agenda actually called for it and we had a lot of discussions, all the professionals, it actually called for a modification of condition of approval for Building Option Plan to maintain the patio. Why can't all parties agree to do that and just do a modification as was presented here I think you had a concern calling it a modification before.

MR. HAHN: As long as I can reserve my right to argue later if I need . . . As long as I'm not conceding that I believe that the Building Option Plan is legally applicable to my client I'm fine with that. I mean I will do that as long as you understand I'm not waiving my argument to later on to argue that . . .

MR. BUCZYNSKI: It might be better, I'm sorry to cut you off I apologize.

MR. HAHN: That's all right.

MR. BUCZYNSKI: Maybe it's better as Chuck just said a modification of the approved site plan that called for a deck.

MR. WALSH: So I remove the first motion and I so move to what you just said.

MR. BUZAK: Let me stop right now.

MR. MCGROARTY: I don't think you've had any testimony.

MR. WALSH: Okay I'm just trying to . . .

MR. BUZAK: This Board has no ability . . . this Board is a quasi-judicial Board it bases its determinations on evidence that's presented through testimony of witnesses. You have to hear the testimony, weigh the testimony, determine whether it meets the legal criteria that's set forth to grant relief or to grant the request that is being made. You're not exactly a jury but you're similar to one in a sense of you don't hear opening arguments and say, guilty or not guilty. So it is, and I say this respectfully Mr. Walsh it is premature to be making that kind of motion in this context.

MR. WALSH: Thank you.

MR. BUZAK: You're welcome.

MR. WEISS: So if we can come to some common ground and agree that perhaps we can work on the modification of a site plan to remedy the problem then maybe we're finally going in the right direction.

MR. HAHN: Sure as long as the Board will allow me to say just with that caveat that I'm not waiving any rights or you know arguments my client may have at a later date as to whether the applicability of that is legal to my client.

MR. WEISS: What would the process be to modified site plan?

MR. HAHN: As long as we can do that . . .

MR. BUCZYNSKI: Oh that's a whole . . . you know Chuck started with that too but that's a whole other question because they weren't the applicant that received approval. So can they really act for a modification of site plan?

MR. HAHN: And that was one of my arguments as to why we can't.

MR. BUCZYNSKI: So what do we do?

MR. HAHN: It was not a site plan though just for the record at least the ordinance I have says final major subdivision approval, there's nothing referenced about a site plan approval.

MR. MCGROARTY: Well there was a site plan for this development.

MR. HAHN: Well not the resolution that I have. Resolution 02-06 is for memorializing final major subdivision approval.

MR. MCGROARTY: In 1987 was the preliminary site plan approval and then there were many afterwards but one I recall was something in the order of October, 1995. So there were site plan approvals I agree that one of those resolutions refers to a subdivision but most of them were site plan approvals.

MR. HAHN: Okay.

MR. BUZAK: Mr. Chairman can I read into the record a letter that I wrote to Mr. Hahn related to this issue?

MR. WEISS: Why don't you do that that's a good idea.

MR. BUZAK: And I'd just ask everyone to listen to the letter because perhaps that will give you some direction. It was dated April 18, 2012 and it reads as follows: *Dear Mr. Hahn: The Board professionals and staff discussed the manner in which the above captioned application should be addressed. The application was filed in the nature of a variance, or in the alternative, a zoning permit in lieu of a variance, related to the construction of a paver patio on the premises. As you are aware, the Building Option Plan does not allow for the construction of a patio on this particular lot. Given the fact that the Building Option Plan was incorporated into the resolution of approval and that the recent modification of the Building Option Plan as it related to decks, brought by the Woodfield Homeowners Association, was considered as a modification to the site plan approval, we are of the view that this application should be characterized in a similar manner. More specifically, the Municipal Land Use Law implicitly allows for an application ". . . for modification or elimination of a significant condition or conditions in a memorializing resolution . . ."* when outlining the situations in which public notice of a

*hearing is to be given. Accordingly, we will be advising the Board that the application should be heard, evaluated and decided based upon it being a request for a modification of a significant condition in the resolution, as opposed to being a variance as statutorily set forth in the Municipal Land Use Law. Please be guided accordingly. Very truly yours,* and I signed that letter. That letter was sent to Mr. Hahn and that prompted a chain of emails back and forth in which Mr. Hahn disagreed with this application being considered on that basis. Which is why we're here in the position we're in now the suggestion was made and it was rejected by Mr. Hahn. Do we say he's not going to accept it tonight but I do want the Board to know that we did in a supplemental or perhaps in partial response to Mr. Bedell's suggestions, we spent a considerable amount of time attempting to create a structure so that we'd have an application before this Board tonight that we could consider under some provision in the Municipal Land Use Law. That was what we came to, Mr. Hahn did not agree with that, and tonight if you recall earlier on said that he did not agree with that.

MR. HAHN: Okay and Mr. Buzak in fairness without reading the entire chain of emails one of the things I asked Mr. Buzak was to please explain to me, and it goes to Mr. Buczynski's point, how we can make an application to modify a condition in a resolution that we were not the applicant to. That was one of my concerns and Mr. Buzak never provided me with an answer. Because he didn't like the way . . . .

MR. BUZAK: Because Mr. Hahn responded and said I don't want to debate this application with you you're the Board attorney my application is before the Planning Board.

MR. HAHN: Right.

MR. BUZAK: When I received that I stopped responding.

MR. HAHN: Right even though my request for information had nothing to do with debating further it was simply to ask how can we do this and how can we proceed that way and I never got an answer. So I just want that to be clear that I didn't just out of hand say you know forget it I said how do we do that?

MR. WEISS: So now we've all . . . you tell us what would you like us to listen to? Are you requesting a variance from a certain . . . . tell us what are you requesting a variance from? Or will you seek a modification I understand what you said and it seems unlikely that you can get a modification of a condition that you had no part of so perhaps that's not the way to go. But you tell me.

MR. HAHN: And if Mr. Buzak knows a way that we can do that because he seems to be a proponent of us pursuing that I said I have no problem doing that as long as I can reserve my client's rights and not waive any legal arguments that the Building Option Plan applies to his property.

MR. WEISS: Nelson?

MR. RUSSELL: The violation that you have is that you have violated the setback requirements? Is that it?

MR. HAHN: That's what we were told yes.

MR. RUSSELL: So there is something that we can have a variance from, the setback requirement.

MR. HAHN: I agree or in the alternative if we can . . . .

MR. FLEISCHNER: Don't talk about an alternative.

MR. HAHN: All right fine.

MR. FLEISCHNER: The question is you were given a summons because you violated a setback, period.

MRS. NATAFALUSY: No excuse me; the summons was issued for constructing a patio without a permit. That's what the summons was issued for it said nothing in the summons about a variance.

MR. HAHN: That's true. It was Mr. Wilpert's December 11 letter that said . . .

MR. RUSSELL: He couldn't get the permit because he had violated the setback requirements?

MRS. NATAFALUSY: He couldn't get the permit because of the Building Option Plan and he was supposed to have a deck on the property and not a patio.

MR. HAHN: Mr. Wilpert's letter does not say that. I'll read the letter.

MRS. NATAFALUSY: I have his letter.

MR. BUZAK: When was the summons issued Catherine?

MRS. NATAFALUSY: The summons was issued . . . .

MR. HAHN: March of 2008.

MRS. NATAFALUSY: You got your answer.

MR. BUZAK: March of 2008 and the summons was for . . . .

MRS. NATAFALUSY: This says March 25, 2008.

MR. BUZAK: And the summons was for what?

MRS. NATAFALUSY: Constructed a patio without a permit.

MR. BUZAK: Okay so the relief that one would seek if one wants to seek relief from a summons that you've constructed something without a permit is to obtain a permit.

MR. WALSH: Right, right.

MR. BUZAK: Right? Because if you had the permit you obviously would not have received a summons. The question is did the applicant, did the defendant in that summons make an application for a permit.

MR. HAHN: No he didn't.

MR. BUZAK: This Board has no jurisdiction to issue a permit so if we're going to look at what the summons is which is to construct something without a permit we can't relieve the applicant of that violation. So we have jurisdiction to do that.

MR. WEISS: Nelson.

MR. RUSSELL: The permit was not issued because it violated the Building Option Plan. Is it the role of . . .

MR. BUZAK: No, no, no.

MR. WEISS: No because he didn't have a permit.

MR. RUSSELL: He just didn't have a permit.

MR. HAHN: That's the reason for the summons but if I can read his letter it explains further why we're here.

MR. WEISS: Is it the letter dated April 14<sup>th</sup>?

MR. HAHN: No Mr. Wilpert's letter December 11, 2007.

MRS. NATAFALUSY: The one he read before.

MR. HAHN: It says a recent site inspection of the above referenced property, my client's property, has revealed that you have installed a patio without applying for a zoning permit from this department. In the past you were denied a permit for a deck measuring 10 feet by 25 feet along the back of the house due to setback encroachments. From my observation the patio looks like it does not

meet the 50 foot rear yard setback. You need to apply for a “c” variance with the Zoning Board of Adjustment. That’s what we were told by Mr. Wilpert.

MR. WEISS: So but if you were to just simplify this and go and attempt to get a zoning permit and if you get denied that zoning permit then there must be . . . .

MR. HAHN: We have 20 days to appeal it right?

MR. WEISS: Or you can apply for a variance for the reasons that you’ve been denied for and then we’ll hear that variance.

MR. HAHN: Fair enough.

MR. WEISS: That seems like a simple way to do it.

MR. HAHN: Okay we will come and speak to Mr. Wilpert next week.

MRS. NATAFALUSY: The zoning officer was wrong there is no setbacks for a patio.

MR. WEISS: Catherine I think we understand that I do.

MRS. NATAFALUSY: Okay.

MR. WEISS: We’re going to simplify this process by asking Mr. Tchiakpe to apply for a zoning permit . . . .

MR. BUZAK: No we’re not going to ask Mr. Tchiakpe to do anything.

MR. WEISS: No of course not that’s the resolution that we think is the smart way that Mr. Hahn and Mr. Tchiakpe your going to decide to go get a zoning permit and then wait to see what happens.

MR. HAHN: I made the note about fifteen minutes ago I was just waiting for an opportunity to say it when I think someone else had proposed that we maybe take a cooling off period I was going to suggest that during that time we’ll go and apply for the zoning permit to maintain the patio and . . . . because by the way we never have so in terms of the 20 days that Mr. Buzak stated earlier that we had to appeal from this decision there has been no determination on the zoning permit question.

MR. BUZAK: So you Mr. Hahn were the one who said you were appealing that decision that your now saying was never made.

MR. HAHN: No, no.

MR. BUZAK: Yes Mr. Hahn that is what you’ve said.

MR. HAHN: No I was appealing the determination that we needed a zoning permit in the first place not that we applied for it.

MR. FLEISCHNER: Mr. Hahn what we have here is Democrats and Republications sitting in a room and nobody wants to agree on anything. You proposed going to the zoning office applying for a permit.

MR. HAHN: That’s what we’re going to do.

MR. FLEISCHNER: You are free to do that if it gets approved you solved your problem.

MR. HAHN: We sure have.

MR. FLEISCHNER: If it’s not approved you have 20 days to appeal it’s been stated. I think that’s how we should end this discussion not go back and forth anymore and that’s it.

MR. HAHN: I agree with you.

MR. BUZAK: Then I would suggest this application be dismissed without prejudice to allow the applicant to do what he suggests be done and in the event that he needs to come back before this

Board as a result of the action he's taking he will have the right to do that without prejudice as a result of the application that has been presently filed and was being discussed tonight.

MR. HAHN: Can't we just carry it though? Because then I've got to pay application fees again?

MR. BUZAK: I would suggest that that not be done. I would also ask the Board to consider that if an application is filed before this Board as a result of the actions that the applicant is taking that, and I'm not sure that the Board can do this but I'm going to ask the Board to do this, that the applicant would be credited with the application fee that has been paid for this application toward whatever application fee may be required for him to submit a new application based upon whatever happens.

MR. BEDELL: If you want a motion I'll make that motion if one needs to be made.

MR. FLEISCHNER: And I'll second it if we do.

MR. HAHN: And I appreciate that.

MR. BUZAK: And it's a motion to discuss the application without prejudice and to have any application fees that have been paid on this application by the applicant credited toward any future application that is made that may result from the applicant seeking zoning permit as he says he is going to do.

MR. WEISS: That being said Steve you'll motion?

MR. BEDELL: I'll make that motion.

MR. FLEISCHNER: I'll second it.

MR. WEISS: Okay any other comments? Catherine roll call.

MRS. NATAFALUSY:	Joe Fleischner	- yes
	Dan Nelsen	- yes
	Nelson Russell	- yes
	Pat Walsh	- yes
	Steve Bedell	- yes
	Howie Weiss	- yes

MR. WEISS: And certainly Mr. Hahn it's not certainly up to me on how you go forward with your next application but I would expect that there's a direction. That whether you're going to challenge a legality of the Building Option Plan which is your right or whether you're going to simply ask for a variance of some certain bulk standard, obviously you've been here long enough to know that we need a direction.

MR. HAHN: Okay. I thought I had a direction but all right. If you didn't agree . . . .

MR. FLEISCHNER: Quit while you are ahead.

MR. HAHN: Quit while you're ahead? Okay we will apply next week and hopefully we won't have to see you again.

MR. FLEISCHNER: Before we adjourn Mr. Buzak sent a letter out . . .

MR. HAHN: We're done right?

MR. BUZYNSKI: Yes have a good night.

MR. FLEISCHNER: With regard to ethics and I wonder if everyone has read it if they have not read it maybe we could discuss it at the next meeting.

MR. WEISS: Well I think we have the letter I certainly read it I think that Joe you should . . . . is there something you want to bring up?

MR. FLEISCHNER: Well how are we going to proceed? Are we going to just let it kind of fall off a cliff or is there something we can do to request that the Ethics Board in their guidelines, etc. be clear on the issues that were raised when I raised the discussion. That would be my question.

MR. WEISS: Does anybody have any comment for Joe on that issue? What was the name of the letter . . . .

MR. RUSSELL: There was still the question in the letter, the limitation . . . .

MR. FLEISCHNER: Right after a resolution . . . he was clear that there should not be any discussion from the time if an applicant is approved to the time the resolution is approved there should be no contact between a Board member and that applicant. And I raised the issue is there a way to limit it for lets say 60 or 90 days after that resolution is approved. And I believe in Mr. Buzak's letter he stated that the State Ethics and he referred to that and it was very well written if I may say so, and he said he would then apply to all Boards within the township as long as it's part of the Ethics law that we do have within the township or guided by the State. And my question is can we request of the Township Ethics Board that a provision which I've just stated be implemented into our ethics guidelines for Mt. Olive Township.

MR. WEISS: To expand the time.

MR. FLEISCHNER: To expand the time.

MR. WEISS: And when I last thought about this my concern was that all contact isn't necessarily bad. So . . .

MR. RUSSELL: Solicitation.

MR. FLEISCHNER: Solicitation of business.

MR. WEISS: I'll give you an example, I'm a salesman and we give an approval for a furniture store, based on what your suggesting I would have to stay out of that furniture store to solicit business for 30, 60, 90 days. But my solicitation of that business could be profitable for that business and as long as they have the resolution and it's been approved I don't know why we need to extend a period. Now I know you were thinking more of the negative side when it makes more sense.

MR. FLEISCHNER: Correct.

MR. WEISS: There is always a positive side that it could be beneficial to multiple parties and just the sake of having a 30, 60, 90 day moratorium after I don't know if that is totally sensible.

MR. RUSSELL: I think the ethics question comes up, if you're soliciting business before the resolution.

MR. WEISS: Right and nobody is going to disagree with that.

MR. FLEISCHNER: Right.

MR. WEISS: Right I think its Joe's comment about after the resolution.

MR. FLEISCHNER: But then my . . . . if one thinks about that and I fully understand the point your making and I certainly understand that, what are the ramifications if someone does approach an applicant before the resolution is signed off? Obviously nothing because I've lived in this town a long time.

MR. WEISS: But isn't that an issue for the Ethics Board to determine?

MR. FLEISCHNER: Well you also have to remember that the Ethics Board is appointed by people within this township. And I've gone to Ethics Board meetings and many times the decisions are made based on, and I hate to say it but I'll say it on the record, who the person is who's being charged with the violation of the Ethics. Clear and simple, I mean . . . .

MR. WEISS: I know the whole system needs a revamping and I don't know if there's a better way to do it.

MR. FLEISCHNER: Yes it does. Well I think that there could be a way if an occurrence such as I'm saying possibly could happen that if it's a Board member that does that they'd be immediately removed from the Board that they're sitting on. If it truly can be proved that they did violate the ethics.

MR. WEISS: Couldn't we put that . . . I mean your language it's unarguable Joe I mean couldn't we add that to rules of procedure rather than . . .

MR. FLEISCHNER: Certainly.

MR. WEISS: Which is more specific to the Planning Board.

MR. FLEISCHNER: If we could I'd be happy with that.

MR. WEISS: I think we could easily do that a heck of lot easier than trying to rewrite the whole world of ethics.

MR. FLEISCHNER: That would be fine from my standpoint, other Board members might have a different opinion but I certainly have no problem with that.

MR. WEISS: And I think keeping it as simple as you said that there is no contact between a Board member and an application until that resolution has become official. Whatever the legal term is I think we have a better shot of putting it in our rules of procedure than . . .

MR. RUSSELL: I have a problem with the term contact, I mean that means you can't shake hands.

MR. WEISS: Well I'm generalizing.

MR. FLEISCHNER: For personal financial gain. We could iron that out I mean that's up to our attorney.

MR. WEISS: You're right.

MR. NELSEN: Howie you mentioned that you are a salesman in that scenario, I have a business I deal with the public what happens there if someone comes before us and it is a customer of mine?

MR. FLEISCHNER: Well we're supposed to recuse ourselves that's why I . . .

MR. NELSEN: For every customer that comes in? Anybody who . . .

MR. WEISS: Well I don't know if that's 100 percent true I think you recuse yourself if you feel that you can't possibly judge fairly based on your relationship.

MR. NELSEN: Right but I wouldn't want to be . . . have a problem because someone boarded a cat with me six months ago and I know them in that relationship.

MR. WEISS: I'm not going to speak for our attorney but if you feel that you can sit without . . . you don't have a business partnership with them, you don't own a part of their business and I'm sure Ed can fill me in on what he has to tell me.

MR. NELSEN: But in your wording of that you know be careful not to make it so broad.

MR. FLEISCHNER: But if someone is a customer ahead of time that's not an issue. That's like saying you can't go to a mechanic in town if they come before the Board or you bought gas at this gas station all the time. I mean that's . . . you know that's kind of a little different.

MR. NELSEN: Okay, okay.

MR. FLEISCHNER: So I think it certainly would be the way that . . .

MR. WALSH: Or could it be in relation to the property. So say I sell lumber and this particular person is building a shop on this property and then I try to sell them lumber it's that property maybe that could be written in . . .

MR. WEISS: I think Joe is obviously being clear if you're a lumber salesman we don't want you to communicate with the applicant that you're a lumber salesman until the day comes that they're ready to have . . . they have their resolution. And then your being a lumber salesman you could have the cheapest lumber in town your business can help them, it can help you at the (inaudible) open market. That's a different story there's no . . .

MR. FLESICHTNER: Right because the resolution has been approved already.

MR. WEISS: And I think we can come up with great examples and I think Joe that I don't mind working with you through email back and forth, if anybody else wants to be on it, let's just draft some language we'll make a presentation. There's no timeframe where we can add . . . So gentlemen here's what I'm going to suggest I will start a conversation with Joe and we'll just put some language together and I'll communicate through Catherine and I'll have Catherine send out our work in progress and we'll allow the rest of the Board to add and once we're comfortable with language we'll simply add it to our rules of procedure. And therefore we don't have, we can kind of be more proactive than the Ethics Board. Okay that's good.

MR. FLEISCHNER: That works.

MR. WEISS: Okay so you can start that . . . Catherine I'll make sure that we send you the documents that we have prepared.

MRS. NATAFALUSY: All right. The Board meeting next week 11<sup>th</sup> Hour Rescue is on.

MR. BEDELL: I think I have to do some reading for that one.

MRS. NATAFALUSY: You have to do reading for that one; Scott has to do reading for that one.

MR. WEISS: I think the last meeting was rather quick.

MRS. NATAFALUSY: Yes it was an hour it was really quick.

MR. WEISS: The listening or the reading won't be long.

MRS. NATAFALUSY: Mr. Walsh you can't vote on that application.

MR. WALSH: Okay.

MRS. NATAFALUSY: That's the only application we have on that night.

MR. FLEISCHNER: I move that we adjourn.

MR. WALSH: Second.

MR. WEISS: All in favor?

EVERYONE: Aye.

MR. WEISS: Good night everybody.

(MEETING ADJOURNED AT 8:50 P.M.)

Transcribed by,  
Lauren Perkins, Secretary  
Planning Department