

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: John Cavanaugh, Joe Fleischner, Rene Gadelha, John Mania, Nelson Russell, Jim Staszak, Steve Bedell, Howie Weiss

Members Excused: Mayor David Scapicchio

Members Absent: Scott Van Ness, Dan Nelsen

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

Professionals Excused: Tiena Cofoni, Esq.

APPROVAL OF MINUTES

May 12, 2011 Public Meeting

Motion: Jim Staszak
 Second: Joe Fleischner

Roll Call:

Joe Fleischner - yes
 Rene Gadelha - yes
 John Mania - yes
 Nelson Russell - yes
 Jim Staszak - yes
 Steve Bedell - yes
 Howie Weiss - yes

June 9, 2011 Public Meeting

Motion: John Mania
 Second: Rene Gadelha

MR. WEISS: Any comments or questions? I just have one comment I believe the June 9 meeting was the conversion hearing that we had for Simoff's property and of course that one is carried until the August 11. I would recommend because there's a lot of detail that perhaps you save a copy of that and read it before we come back because I was looking at it tonight and there's a lot of information in that. So seeing no other comments roll call please?

MRS. NATAFALUSY: John Cavanaugh - yes
 Joe Fleischner - yes
 Rene Gadelha - yes
 John Mania - yes
 Nelson Russell - yes
 Steve Bedell - yes
 Howie Weiss - yes

RESOLUTION OF APPROVAL

Resolution #08-13 ZBA – Lanterman / Borelli – (Block 8000, Lot 10)

Motion: Jim Staszak
 Second: Joe Fleischner

Roll Call:

John Cavanaugh - yes
 Joe Fleischner - yes
 Rene Gadelha - yes
 Nelson Russell - yes
 Jim Staszak - yes
 Steve Bedell - yes
 Howie Weiss - yes

COMMITTEE REPORTS

MR. WEISS: Let's move into committee reports. The Mayor is not here this evening so we'll skip his report. Mr. Mania if you have anything from the Mayor you can share that with us as well.

MR. MANIA: Well I can tell you that we're going to have a special meeting on the 26th at 7:00 p.m. Council and the purpose of the meeting is to introduce an ordinance to reopen Flanders-Netcong Road and Gold Mine Roads. Formal action will be taken.

MR. WEISS: Is there anything from the Planning Board that would . . . is there any kind of road dedications Gene do you remember anything? Is there anything that we might have been involved with?

MR. BUCZYNSKI: No nothing it never came in front of the Planning Board.

MR. WEISS: All right so the Planning Board doesn't have any actions.

MR. BUCZYNSKI: As far as I remember it never came in front of us.

MR. MANIA: No action from the Planning Board I just wanted to share it with you.

MR. WEISS: Why is that an issue at this point do you know? Why has that been brought up?

MR. MANIA: Because a resident came to the Council meeting and wanted to know why it was closed. We had a meeting last week with the Safety Committee and both Flanders and Budd Lake Rescue Squads and Fire Departments both said they would love to see it open and really said it should have never been closed.

MR. WEISS: Okay just curious. Okay Environmental Commission anything Nelson?

MR. RUSSELL: We meet on Wednesday.

MR. WEISS: Okay Ordinance Committee?

MR. STASZAK: Nothing at this time sir.

MR. WEISS: Thank you Jim. Nothing from the Street Naming Committee. Rene any Open Space?

MS. GADELHA: We're not meeting in July but Kathy did forward me four things to mention and I'm waiting for them to upload on my phone so if you can come back to me at the very end perhaps I can update everybody. Sorry.

MR. WEISS: I can't promise you I'll try my best.

MS. GADELHA: Okay thank you.

DISCUSSION MATTER

JUAN PEREZ – OBJECTION TO CHARGES AGAINST ESCROW ACCOUNT

MR. WEISS: Okay I just want to also note that the discussion matter that was originally scheduled for this evening Mr. Perez objection to charges to the escrow account has been cancelled. He withdrew his request to have a hearing so that's coming off of our agenda and there's no reason to discuss it anymore.

DEVELOPMENT MATTERS

APPLICATION #PB 11-06 – TOLL NJ II LP

MR. WEISS: That brings us to our first developmental matter and of course I see Mr. Selvaggi went out in the hallway but I'll speak slowly. We have PB 11-06 which is Toll NJ II LP for a variance for an encroachment with a side yard setback at 58 Elias Drive Block 4410, Lot 3. Mr. Selvaggi welcome.

MR. SELVAGGI: Good evening sorry for that delay.

MR. WEISS: No that's fine, that's fine take your time Mike.

MR. SELVAGGI: Michael Selvaggi from Courter, Kobert and Cohen on behalf of the applicant Toll Brothers. To my right is Dave Fultz who will be our witness, this is an application that is for Lot 3, Block 4410 it is the model home in the Morris Chase development. The relief we're asking for is a bulk variance "C" variance some of you may refer to it as and we're trying to and hopefully get relief to allow for a larger deck off of the rear of the building. The larger deck which we'll have pictures of and show you what's there now will encroach about 5 feet into the rear yard setback. We believe that the relief is warranted under the "C" standards which we'll get into after the testimony. What I'd like to do though is to have Dave kind of give you an overview of where we're at and what we're looking for so I think he should first be sworn.

(DAVID FULTZ SWORN IN FOR THE RECORD)

MR. BUZAK: Okay can you please state your name and business address for the record spelling your last name slowly.

MR. FULTZ: David Fultz (F-U-L-T-Z) and my business address is 2 Scarborough Court in Budd Lake, New Jersey.

MR. BUZAK: Have a seat.

MR. SELVAGGI: Dave what's your relationship to Toll Brothers?

MR. FULTZ: I'm the Senior Project Manager for the Morris Chase community.

MR. SELVAGGI: Okay and what is that title require you to . . . what are your responsibilities?

MR. FULTZ: I'm responsible for managing construction, sales staff for the Morris Chase Carriages and Morris Chase Estates communities. So basically I handle sales and construction.

MR. SELVAGGI: Okay how long have you held that position?

MR. FULTZ: With Toll Brothers a little over 8 years.

MR. SELVAGGI: Okay are you familiar with the model home on Lot 3 in Block 4410?

MR. FULTZ: Very.

MR. SELVAGGI: Okay when was that constructed?

MR. FULTZ: The frame was originally constructed in 2007 the completion you know we, I'm sure most of you know, we were delayed for quite some time but the completion of the home was February of 2010.

MR. SELVAGGI: Okay the model home currently has a deck off of the kitchen?

MR. FULTZ: Yes.

MR. SELVAGGI: Okay. I'll distribute these. These are photographs Mr. Buzak there . . . how many are in here Dave?

MR. FULTZ: There's five.

MR. SELVAGGI: Five do you want to mark each one individual?

MR. BUZAK: Yes mark them individually A-1 through A-5 with today's date. We'll keep . . . they're all in the same order?

MR. SELVAGGI: Yes they're all in the same order. Dave first of all did you take these photographs?

MR. FULTZ: Yes.

MR. SELVAGGI: Okay. There are five photographs in the package let's start with the first one that we're looking at which is this one.

MR. BUZAK: Did you mark it A-1 Mr. Selvaggi?

MR. SELVAGGI: A-1 and what is A-1?

MR. FULTZ: That's a picture I took from the backyard of the model home and it's a shot at the deck. It's a walkout basement home and it's a shot of the deck off of the first floor which is the breakfast area.

MR. SELVAGGI: Okay and is that the deck that you'd like to see enlarged?

MR. FULTZ: Yes.

MR. SELVAGGI: Okay. A-2 then this is A-2 what are we looking at with A-2?

MR. FULTZ: A-2 is a side profile shot of the deck it's basically showing the steps to grade from the first floor living down to the backyard which is at the basement level.

MR. SELVAGGI: Okay how far does that deck extend in that view from the side of the house?

MR. FULTZ: 3 feet 10 inches.

MR. SELVAGGI: Okay if you just return to A-1 for a moment the top of the deck you know from the stairs looking over to the right in the photograph, how wide is that?

MR. FULTZ: It is 8 feet wide.

MR. SELVAGGI: Okay so the deck is approximately 4 by 8?

MR. FULTZ: It's 4 by 8 at the furthest point out but then you see that little alcove so actually if you're standing on the deck from the door to the outer face of the deck it's 5 feet 2 inches and the overall width is 80 feet.

MR. SELVAGGI: Okay. A-3 what's A-3?

MR. FULTZ: A-3 is just a profile shot from the other side, the opposite side of the stairs.

MR. SELVAGGI: Okay you then have this photograph which . . . where was this taken?

MR. FULTZ: This is one of our production homes that we built, sold and built for a homeowner at Morris Chase Estates.

MR. WEISS: Mr. Selvaggi we're going to refer to this as A-4.

MR. SELVAGGI: A-4 yes. Now why is that included in the package?

MR. FULTZ: This is just to show . . . this is representative of the type of deck that can fit on virtually all of the homes at the community, remaining homes.

MR. SELVAGGI: Okay and what are the dimensions of that deck we're looking at in A-4?

MR. FULTZ: This deck is approximately 12 feet out from the home right there where you see the two little white vents and it's about 18 feet long across the back of the house.

MR. MANIA: 12 by 18.

MR. FULTZ: Yeah.

MR. SELVAGGI: Okay and then A-5 is that a side profile?

MR. FULTZ: Yeah that's just another shot showing the patio and from the same generally the same angle.

MR. SELVAGGI: Okay now this production home with the larger deck is that a standard feature, that size deck?

MR. FULTZ: No that's actually an option.

MR. SELVAGGI: Now returning to and we'll look probably the easiest picture to look at is A-1 which is the deck from the back, what size deck if you were to get approval would you like to or hope to see off the back of that building?

MR. FULTZ: From left to right we would like to be approximately 18 feet and then off the back of the home we're seeking 10 feet.

MR. SELVAGGI: Okay now we had submitted a plan

MR. BUZAK: Excuse me when you say off the back of the home you mean the façade of the house out 10 feet?

MR. FULTZ: Yeah the further point that sticks out on the back of the house. Not the door elevation or the door plane but the plane where the first two windows are next to the stairs we want to go 10 feet out from there.

MR. BUZAK: Right.

MR. SELVAGGI: Mr. Buzak this was submitted as part of our application I don't know if you want this marked?

MR. BUZAK: Yes I do.

MR. SELVAGGI: Okay. We'll mark this A-6 and Dave what is A-6?

MR. FULTZ: A-6 is an exhibit plan that shows the as-built or location of the home as it sits on the property along with all of the impervious features and the current deck.

MR. SELVAGGI: Okay. It also shows . . . well the current deck is to the rear of the property and it's in a faded lettering, ghost lettering and the proposed deck is also shown is it not?

MR. FULTZ: Yes.

MR. SELVAGGI: And it looks like that's . . . is that 18 running from the house or along the house?

MR. FULTZ: That's along the house.

MR. SELVAGGI: Okay and then from the house?

MR. FULTZ: 10.

MR. SELVAGGI: 10 feet okay. And is that the standard size deck that you would . . . customers would customarily seek?

MR. FULTZ: That is certainly a very standard size yes.

MR. SELVAGGI: Okay is that deck larger or one of the larger decks that you would build.

MR. FULTZ: I would say it's about average.

MR. SELVAGGI: It's about average okay. Now if we look at A-2 which is the model house I see in the back there appears to be a patio off the back?

MR. FULTZ: Yep.

MR. SELVAGGI: Would the deck that's proposed, this one that's shown as proposed deck in A-6 would extend beyond that patio?

MR. FULTZ: No.

MR. SELVAGGI: Okay in fact if we look at A-6 is that fairly representative of how far that deck will extend towards or over the patio?

MR. FULTZ: Almost exactly.

MR. SELVAGGI: Now Mr. McGroarty in his report brings up an issue which basically says in laymen's terms the house is too far back on the property and you know it's a self created hardship. Why was the property or the building sited in that location?

MR. FULTZ: Well I would absolutely agree that it is a self created problem. The previous regime that was there before the current managers positioned the home on the lot so I can't say specifically why they put it there other than maybe they didn't eat their Wheaties that morning. But I would say that if I were to do it it would have been positioned significantly closer to Fields Way.

MR. SELVAGGI: Which pushing it forwards towards the front correct?

MR. FULTZ: Yep.

MR. SELVAGGI: Now that being said this deck that you have here why is this now a hindrance or an obstacle for Toll Brothers? I mean what type of problems is it creating?

MR. FULTZ: We deal with the . . . I mean we have homeowners or perspective homeowners coming through our door and I would say a good majority of them question the reason why we've located such a small platform on the back of the house. And secondary to that is well can we build a larger deck on our home and we go through the process of explaining to them that we made a mistake and that absolutely that they can build a deck, a reasonably size deck on the back of their home.

MR. SELVAGGI: Now one of the questions that I had had for you was, and this always raises the issue, is this going to open up or is this a slippery slope, Pandora's Box? In response to my question you did an analysis of the 105 single-family lots on the property and what did you come up with?

MR. FULTZ: One of the 105 could not accommodate a deck of the size that we're proposing and that one even would be very close. Instead of being 10 feet off the back of the house I figure we could position one of the same length about 9-1/2 feet off the back of the house. But that's the one and only lot that we couldn't build at least this size deck and in most cases a deck much larger than the one that we're proposing.

MR. SELVAGGI: Okay how important when it comes to trying to convince somebody to move into Mt. Olive Township at Morris Chase is a deck and what's your profile of buyers?

MR. FULTZ: Our buyer profile right now is a 30 something generally speaking, a younger family some with kids and in the conversations I've had with them some anticipating having children. And it is an issue I mean in this particular market I mean we're not setting the world on fire at Morris Chase Estates. You know we've sold ten homes to date and any marketing pitfall that we can avoid you know we're trying. This is one that we deal with like I said with anybody who walks into our beautiful kitchen and breakfast room they look out the window and they see a platform. So it's a negative right out of the gate right when you walk into our home.

MR. SELVAGGI: Okay now interestingly enough I mean . . . well let me ask you this question, typically what do these families use these decks for?

MR. FULTZ: Well I mean if you look at the other two exhibits I'd say that's pretty representative A-4 and A-5 you know table and chairs, barbecue grill, you know steps to grade it's basically it's an area off of their primary living space which is the first floor where the kitchen is located that they can host and at the very least just enjoy as a family.

MR. SELVAGGI: Okay is there any way that it would be viable to put in perhaps a slightly larger deck that would still conform. I mean is there any practical benefit in doing that in terms of sells for you?

- MR. FULTZ: On this lot?
- MR. SELVAGGI: Yes on this lot.
- MR. FULTZ: We can't no.
- MR. SELVAGGI: Okay how close is that deck right now to the rear property line?
- MR. FULTZ: It's just over 20 feet.
- MR. SELVAGGI: Okay. So there's no possibility of getting really any deck on there that would be conforming to that rear yard setback.
- MR. FULTZ: Nope.
- MR. SELVAGGI: If the deck were . . . if you were to receive permission to build that deck would the patio remain?
- MR. FULTZ: Probably a modified version of the patio.
- MR. SELVAGGI: Okay what do you mean a modified version?
- MR. FULTZ: Well with the deck now is going to extend partially over the area where the current patio is you know we would probably . . . in the spirit of putting in footings we would probably have to remove some of the pavers. But I would think they will be returned back to the general condition that it is right now. We're not seeking to make it any larger.
- MR. SELVAGGI: Okay. Has the small platform deck, and I know it's probably tough to tell because of the economy, but do you feel it's had a detrimental impact on your marketing ability over there.
- MR. FULTZ: Anything negative that my sales manager has to discuss upon the initial visit to our home is a detriment to us, absolutely in this market.
- MR. WEISS: If you don't mind for a second I have a question from Mr. Bedell.
- MR. SELVEGGI: Yes.
- MR. BEDELL: Well I just have a couple of questions. What's the size of this home, the total square foot of this home or the other homes to be built?
- MR. FULTZ: This home with the finished basement is a little over 4,000 square feet.
- MR. BEDELL: And are all of the homes positioned this far back off the street and this close to the rear property line?
- MR. FULTZ: Absolutely not.
- MR. BEDELL: So this is one . . . so most homes . . . so we may not run into another hundred homeowners who want to build a deck and their homes are also 20 feet off the backyard.
- MR. FULTZ: Conceivably as long as I'm there you should never have this issue.
- MR. SELVAGGI: Mr. Bedell we had asked and you had done the analysis how many other lots could potentially be presented with this problem.
- MR. FULTZ: One. Well one that is not sold to date the other one is sold and the homeowner hasn't expressed any interest in purchasing a deck.
- MR. BEDELL: But all the other lots there to be built or to be sold when the homes are built they're not going to be 20 feet off the backyard where you're not . . . because I look at it say for a 4,000 square foot house this is a tiny deck. I didn't encourage you to you know I know you're cutting it close

but even bump it out instead of 10 feet, 12 or 13. You might as well ask for everything and get knocked down.

MR. FULTZ: I would love to and in the spirit of being conservative here I . . .

MR. BEDELL: Yeah I'm just saying that's a small deck for that size house.

MR. FULTZ: I agree with you.

MR. BEDELL: You know and it was pretty silly in my opinion but okay.

MR. FULTZ: I agree thanks.

MR. WEISS: Hold on Rene had a question.

MS. GADELHA: You mentioned you know people coming in and you don't want to have anything negative that they're looking at. Can they get into the model home without someone explaining or showing them that this is a unique situation? Is it a model home that's open that they can go in and see the deck and not have someone answer the other homes don't have this issue or wouldn't have this issue?

MR. FULTZ: Well my model home is always staffed as long as it's open. Now conceivably if somebody drives up the road from I guess from the top of the . . . from the north towards the south they're going to see the deck and not have anybody to answer the question. The only other circumstance I could see is if my sales manager is working with another perspective buyer and somebody is walking freely through the home then yeah they could probably pose the question in their head but not get an answer.

MS. GADELHA: Okay and then my second question you mentioned there were 105, and you said this was a unique situation so 104 this kind of . . . what Steve was saying, we won't have 104 perspective home buyers seeking a variance for a deck. This is really unique to this situation.

MR. FULTZ: Absolutely.

MS. GADELHA: Okay thank you.

MR. WEISS: Okay let me go John then Joe.

MR. MANIA: You just made a statement, you said as long as you're there that problem we would never have.

MR. FULTZ: My boss is here so . . .

MR. MANIA: Supposing you were replaced? Not that I would like to see that don't get me wrong but I'm being the devil's advocate.

MR. FULTZ: I think it's you know speaking for myself and the people that are currently employed in our division it's a pretty general building practice that in my opinion I'm shocked that it was overlooked by the first regime. It's . . . I mean it's the A, B, C's of building a house so I don't think that anybody who's qualified would do this going forward.

MR. WEISS: Joe go ahead.

MR. FLEISCHNER: This is not really a question but more of a cut to the chase kind of thing. You guys screwed up when you built the house it's very obvious. Now you want to put a deck on the house so that you can sell it it makes sense.

MR. FULTZ: Correct.

MR. FLEISCHNER: If this Board were to see fit to give you a variance to do this would you be willing, and we can't bind you to this, the increase cost for you guys to eat it and not tack it onto a homeowner who wants to buy that house?

MR. FULTZ: For this particular home?

MR. FLEISCHNER: For that particular home. Because obviously you just stated that it's not going to affect all of the other homes but now you've got a house to show and I'm just saying that I raise it as hey you guys screwed up and we all know that but now you're going to put a deck on the house and then you're going to tell the homeowner who may want to buy this house and hopefully someone will well now the added cost is an extra 10, 12 thousand dollars.

MR. BUZAK: Before you answer that question I appreciate Member Fleischner's concern here and his position but I think that that really goes beyond we ought to be dealing with here. What a developer sells a house for or you know if he's coming in to seek a variance there's standards that are set forth in the law that he's got to meet and if he doesn't meet them then he doesn't get the variance. And I think while just in general I'll use this as a take off point here one of the standards is not feeling sorry for a development, one of the standards is not you know the developer screwed up. Chuck mentioned the self created hardship, the applicant has very candidly and I give him much credit for this because we don't get this kind of candid testimony sometimes in these situations but I think it took a lot of fortitude for him to say what he said. Because I think that's what happened.

MR. FLEISCHNER: I certainly respect him for it.

MR. BUZAK: And I think that's the case and we have to look at it and this Board has to look at it from the point of view of the law. And you're familiar with variances we talked about it before, I'm sure Mr. Selvaggi will talk about it in his brief summation, his very brief summation and I will also advise you on it. But with all due respect Mr. Fleischner it's . . .

MR. FLEISCHNER: I perfectly understand that but I also would like to look out for future residents of our township.

MR. SELVAGGI: David's boss said he would do it. But I understand Mr. Buzak's concerns.

MR. WEISS: Mr. Fultz I have a question for you.

MR. FULTZ: Yeah.

MR. WEISS: You had mentioned that prior administration has designed this deck on this home. Is that prior administration of the Toll Brothers administration?

MR. FULTZ: Yes.

MR. WEISS: And the same Toll Brothers that builds houses so it's not like you can (inaudible) a former builder who sold the project midway and you got stuck with it. Because my concern is that, listen I'm kind of going with what John said to you, perhaps your promoted to a higher level and somebody takes your position, I don't want to come across (inaudible) said you know if we screw up don't worry we'll get . . . you know then maybe five streets down the road they'll have a situation where you're going to have to put a house further off the road for whatever reason. And so what's going to stop you from saying that's okay we'll put a big house there and worry about it later. It's kind of like what's happening here. Not you personally but your company who's in the business of building homes put too big of a home on this particular lot and now the deck isn't really fitting and now you're looking for some relief. And I don't know if I'm real happy with that but . . .

MR. SELVAGGI: Here's what we can do, the analysis has been done and as we said there's the potential for one other lot. Now we don't know if that buyer of that particular lot would want a deck of this size but certainly we would agree however you wanted to do with that, this applicant Toll Brothers won't bring except perhaps if that buyer of that other lot wants to but the other 103 lots we will agree that we're not going to . . . Toll Brothers will not request bulk variance relief for those other lots.

MR. WEISS: Does that sound legal Mike? It sounds like you have the right to ask for that.

MR. SELVAGGI: Well no it's a deed restriction we can certainly horse trade for that. The only option would be is if somebody buys that lot that restriction wouldn't hold on to them so if they wanted to you know build a 40 by 30 deck I mean they can have at it. But we wouldn't come before you for bulk variances as it relates to decks on these other lots.

MR. WEISS: How many different models do you have?

MR. FULTZ: Six.

MR. WEISS: Is this the largest?

MR. FULTZ: The second from the largest.

MR. WEISS: And again I'm just guessing I just want to make sure that a perspective buyer could basically take any of those six homes and pick their lot, (inaudible) restrictions where the houses can go.

MR. FULTZ: No there are certain home plans that don't fit on certain lots. But we have actually our in-house engineer prepare a report that details what house and what options, and there's a bunch of them, fit on each individual lot.

MR. WEISS: So that would be a restriction if I'm a buyer and I want the big home number two and I want this lot for example you would come and tell me I can't do that?

MR. FULTZ: Absolutely.

MR. WEISS: All right Steve you had a question?

MR. BEDELL: This house right now if they were to build this proposed deck what's their coverage, like their property coverage?

MR. MCGROARTY: I don't know ask them.

MR. FULTZ: Yeah I don't know exactly what it would be but would that deck be considered . . .

MR. SELVAGGI: Yeah see the deck wouldn't be coverage.

MRS. NATAFALUSY: Building.

MR. SELVAGGI: Building coverage.

MR. WEISS: Steve I think that's relative based on the size of the lot. All of the lots are different size.

MR. BEDELL: That's what I'm asking, I'm asking with the house and the deck are they going to be at 20 percent, 25 percent you what is that lot . . .

MR. WEISS: You're talking about this particular situation?

MR. BEDELL: Yeah you know and what is that lot . . . what's the coverage amount for that lot? Will this put them over, will this be under?

MR. WEISS: Mike you don't have an engineer right? He has no engineer to answer that I don't think that's fair that . . .

MR. BEDELL: Well I'm saying if I put a pool I can't cover more than 30 percent of my property so I'm asking for this home what is the coverage percent for this current lot if they build a deck? Are they going to be at 30 percent or 25 or what's the limit? You know where people come in from Flanders Crossings they have smaller lots and they can only cover 30 percent of their property with a deck and a pool it's now going to be 40 and that's what we grant a variance for.

MR. STASZAK: Yeah but they're not asking for a coverage variance and I don't think they're exceeding what the limits are. Because their problem is that they've located it wrong.

MR. BEDELL: Sure.

MR. STASZAK: If they move it around they wouldn't even be here.

MR. BEDELL: Sure.

MR. STASZAK: If they had the ability to drag it forward.

MR. SELVAGGI: Yeah it's not a question even of the size of the dwelling it's really the location of the dwelling. I mean we can only speculate but they probably wanted that a more grand view from the street and its setback and it's the model so everybody was focused on the front and nobody thought about what was going on in the back. And you know look Toll Brothers has been before you guys a long time our firm has . . . and we're not going to come here and try to tap dance as to you know somebody moved it or . . . it's pretty hard to try to justify why it's there. But you know I mean again we're trying to go with a modest deck, if we were in here with our largest deck and we were encroaching then I think you could say well we're being pigs about it. You know the other point we said is you know you've got that patio in the back which is going to actually be . . . I mean if you're concerned about creating some space between neighbors well that patio will still be closer. You know you could have the boom box and you could have the you know the noise and people sitting out there closer to that Lot 2 then what you would be on this deck.

MR. WEISS: Now I suppose it would be responsible on our part if you were just . . . just say this was a typical homeowner asking for a variance one of the questions I would ask is is there any place else on this piece of property that you would put the deck so that it would perhaps not be so invasive on what I'm looking at at the back of Lot 2?

MR. SELVAGGI: Well that's actually the side, yeah

MR. WEISS: Okay but so it's encroaching pretty close to Lot 2 so I'm not here to design a deck but I'm thinking well why couldn't you put this deck, you know I understand you want to utilize the back door to make a conforming deck and build it on the north . . . make it on the northeast side of the house.

MR. FULTZ: That's actually the garage where we have pavers on that sidewalk that's actually a three car side entry garage. And then the area behind that driveway is a family room and a fireplace.

MR. WEISS: Let's make sure we're talking about the same thing. Would you point to what (inaudible).

MR. SELVAGGI: We're looking at A-6.

MR. FULTZ: And I think that we would still not conform.

MR. SELVAGGI: We're looking at the Elias Drive side.

MR. WEISS: That's correct the Elias Drive side.

MR. FULTZ: We're right up against the building box on that side as well.

MR. WEISS: No I understand if we're going to go over it don't we think that we should try to make this deck the least invasive we can? That would be our job if we were a homeowner coming in and we'd try to work with them and try to find a place that makes most sense on this particular property. You know we hear you and we understand it but it's also our job to make sure that we're . . . because if Lot 2 comes in and they have this situation now you have, well now you've totally defeated what you want to accomplish in this neighborhood by building things onto each other.

MR. SELVAGGI: You see one of the difficulties we have is on Elias Drive since this is a corner lot that's impacted by the front yard setback too. So you've got 40 feet I think is the front yard setback for this zone so you'd still I think everywhere Dave . . .

MR. FULTZ: I think in the spirit of the, just the community, and I don't know what the future homeowner is going to be doing on this deck but that Elias Drive is the main drag where that deck will be in view from potentially every homeowner that's entering and exiting the community.

MR. WEISS: I don't know if I'm buying that, you have some plantings you can take care of that and I think I agree with you Mike no matter where you put it you're going to go over. So the point is at least from my position if we're going to go over a setback let's try to make it the least invasive we can and I think your suggestion is not the least invasive it's actually . . . I understand it's probably the best for you, I don't know if it's the best for neighbors. Rene?

MS. GADELHA: Is anyone in Lot 2 right now?

MR. FULTZ: No it's an unsold lot.

MS. GADELHA: And the, I don't know how to describe it, the dashed the broken line is that basically the footprint of where the house would start to sit? Just to kind of get an idea of how far the deck would be from . . .

MR. WEISS: That's a utility easement.

MS. GADELHA: Oh.

MR. SELVAGGI: You're talking about down Elias, that's the easement.

MS. GADELHA: This.

MR. BUCZYNSKI: No that's the building envelope.

MR. WEISS: No on Lot 2 that's the building envelope.

MS. GADELHA: Right but would that be the footprint the house would be right there?

MRS. NATAFALUSY: No.

MR. WEISS: No that would be where they can build.

MR. BUZAK: It could go up to that point.

MS. GADELHA: Okay but we're not locked in. Okay because I agree with you Howie I think obviously this would be less intrusive to these people and then tangentially to Lot 4 they wouldn't even see it.

MR. MCGROARTY: Could I say something though?

MR. WEISS: Sure Chuck.

MR. MCGROARTY: If I may the applicant, they have to make a case for the variance they provided the deck off of the back of the house which is where they think it makes sense but I don't really think the Board needs to figure out where it ought to go. If they can't make their case for the variance where it is end of story, I mean I think the Board is being very helpful in trying to anticipate alternative locations but if your put in the peculiar situation of providing testimony for their variance and then needing to make a decision on their rationale but I think you might want to be careful not to do that.

MR. SELVAGGI: And just bear in mind you know by putting it back there since Lot 2 has not been sold that potentially impacts, I mean we're also suffering you know potential marketing hardship there on Lot 2 because somebody that's going to buy Lot 2 could say, hey wait a minute you know that deck on Lot 3 is right in my backyard or my side yard.

MR. WEISS: Jim?

MR. STASZAK: Ed the purchaser of Lot 2 if this variance is granted would they have to be advised that this deck was obtained through a variance and that they have to know?

MR. BUZAK: No.

MR. WEISS: Nelson?

MR. RUSSELL: What destroys me looking at the contour lines is that deck is going to be an additional 8 feet above the building envelope on Lot 2. Looking at it it looks like it's going to be about 18 feet above the foundation under Lot 2 which allows anybody on the deck to look right down into the house on Lot 2.

MR. BEDELL: Look at Wyndham Point, Wyndham Point is the same way though you're on top at Wyndham Point you're looking straight down on somebody.

MR. RUSSELL: Yeah but you're going to be, I mean it's a full story higher than whatever is going to be built on Lot 2.

MR. WEISS: I think we have another question back here, was it John? Did you have a question? Rene?

MS. GADELHA: You had mentioned that you have six different types of houses and certain ones are allowed on certain lot sizes. Lot 2 not being able to see its size is it one of the smaller or larger or medium . . . what would be currently allowed on Lot 2 in terms of house sizes?

MR. FULTZ: I don't know exactly without having seen my whole building box but I would say it's an average lot size. Four of the six would you say would probably fit on that lot. The other thing I want to just note is that Lot 2 that is the side yard of the building box that we're looking at and I don't know that many of our homes would fit all the way up to the setback line anyway. Whether that makes a difference or not the home is going to be positioned to the northwest away from that line so we're not . . . you know we're going to get a little bit of a buffer there as far as the distance between the homes.

MR. BUZAK: It will front on Elias?

MR. FULTZ: Yes.

MR. WEISS: I think before we go any further I think Mr. Buzak had a comment.

MR. BUZAK: Well I have a question. This is the model home right?

MR. FULTZ: Yes.

MR. BUZAK: Do you have any evidence to demonstrate that when people who have come into this model home to look at it have been negatively impacted by the deck by the fact that the existing deck as shown is as small as it is.

MR. FULTZ: Evidence, no.

MR. BUZAK: Okay I mean they ask questions I understand that and you I assumed your people say well this is the model you're not going to buy this and by the way of course it entails you're going to have a much bigger deck and I would suspect that that would resolve that issue. I mean I understand maybe their initial reaction would be, gee this is really small, but once they were explained they're not buying that house. Now if you were in here I suspect with 104 sold and this is the last one and you're going to sell it and now you have to tell the people what you see is what you get and they say I'd love to buy this house but I'm not going to buy it with a 5 by 8 deck back here and you know that may be a situation. But that . . . I mean hopefully that will be the end of the year for you but you know perhaps it will be some years from now.

MR. FULTZ: Right and the other thing pertaining to that is yeah we talked about putting the deck on Elias, I think the whole spirit of this variance request is that we want to show people what they're going to get. And conceivably nobody is going to build a deck on the side of their home. We just . . . I mean we're not going to enjoy the use of this deck but we would like to represent what we're going to be able to build for the other 104 people that purchase a home from us.

MR. BUZAK: Is there any access from inside where you can put a door or something to be able to get to the deck on Elias? I don't know what you have there.

MR. FULTZ: Right now what that little bump out you see is a fireplace and to the left and to the right are pretty tall windows.

MR. BUZAK: And that's over the garage right where the pavers show? That's the garage on that side right?

MR. FULTZ: Right and that you know that look around the fireplace is a symmetrical look. So dropping the door and all would kind of negatively impact that.

MR. WEISS: Steve go ahead.

MR. BEDELL: For the back of the deck couldn't you just wrap that further back and where the house comes in 4 feet your gaining an extra 4 feet on the deck and therefore your kind of going, moving back from Elias as opposed to moving closer to Elias?

MR. FULTZ: I guess that's possible but that's right off of the dining room. Actually it goes . . . yeah it goes across the kitchen and then down into the dining room.

MR. BEDELL: Well dining room or not you don't have many choices you know.

MR. FULTZ: Understood. Yeah it's still going to be tight right . . . I mean I don't know what that dimension is but I don't know if you'd have 3 feet . . . it would be tight, it would be a tight pass right on that corner.

MR. WEISS: Nelson go ahead.

MR. RUSSELL: Even if they also owned Lot 2 couldn't they reconfigure the lot to the point where there wouldn't be a setback problem?

MR. WEISS: I don't know if they can do that at this point.

MRS. NATAFALUSY: They would have to get a lot line adjustment and then the other lot could be . . .

MR. RUSSELL: Lot line adjustment?

MR. WEISS: Joe?

MR. FLEISCHNER: I think at this point really you know Chuck said it best. They've come in and asked for a variance, this is what they presented, they've admitted like you said which was quite noble they screwed up and they're trying to fix it to the best of their ability and the question for this Board is do we want to give them the variance with this deck or don't we. And it's kind of cut and dry and that's you know obviously we'd like to see you sell the house and sometimes people come in and they want the model house before even all of the other houses are built. I've seen this it's entirely possible for someone to come and say there's a deck on this house I'll buy it.

MR. FULTZ: Right.

MR. FLEISCHNER: I think we should call a question.

MR. WEISS: Mike I'll turn it back over to you, any other . . .

MR. SELVAGGI: Yeah we've gone through with the testimony I mean it's you know as Mr. Buzak said we can be brief. You know the C-1 standard is you know if there's exceptional narrowness, shallowness, certain physical features on the property uniquely affecting it. I mean we would argue that it's the location of the building. How it got there whether it was self created or not that does give rise to the request for the variance. When you take into account, and I think it's interesting because you know a deck and a patio to a certain extent are equivalent type uses. You know you can have the patio go almost to the side yard of Lot 2 and basically accomplish or provide a lot of the amenities that people would have with a deck. Because it's a deck we go back that same distance . . . well we don't even go back that far, suddenly that becomes more problematic. I think there's nobody in Lot 2 certainly it would be more warranted if we were going to encroach upon some innocent purchaser of Lot 2 you know moving forward. The owner or the potential owner of Lot 2 is going to see the deck hopefully and he or she can decide whether they want to reside with a deck that close. I think Mr. Russell brings up a better point regardless of the size of the deck is the fact that that deck even now provides you know a bird's eye view down into Lot 2. That's an issue that is almost immaterial to the size of this deck it's the topographical conditions that give rise to that. You know importantly, and if you pick up on the Lang Case which I know Mr. McGroarty and Mr. Buzak are familiar with you know one of the things in that case they talked about a swimming pool and the neighbors got all up in arms because they said the swimming pool is a self created hardship. One of the things that Court, the Supreme Court found is that you know the swimming pool is not so large that it was out of the ordinary. I think here this deck as Mr. Fultz testified is consistent, I mean if we came in with a 30 by 40 deck I think you could legitimately say hey look your being pigs it's . . . your compounding your self-created hardship. You know we're not we're not doing that the deck that you see in A-4 and A-5 in those photographs are representative of at least the size of the deck that we would hope to build here on Lot 3. So when we look at the negative criteria I don't know if you can necessarily come to the conclusion that this is going to have a substantial

impact on the neighborhood scheme or on your zone plan. It is only approximately 5 feet, 5-1/2 feet perhaps of that encroachment and you know I think on balance which is really what you're doing with a variance is trying to say you know does the positive criteria outweigh the negative. Hopefully you will agree with that, at least our view of that.

MR. WEISS: Do you know what I'd like to do just real quickly. Chuck I know we were referencing your report, was there anything else that you wanted to bring up?

MR. MCGROARTY: No thank you Mr. Chairman, no I don't think so.

MR. WEISS: Okay and I know Ed you have another question.

MR. BUZAK: Yeah I'm sorry I notice that the stairs from the deck as it now exists do not connect to the patio. Instead they just seem to go down into a planting area. So I have a couple of questions, first is there a way in which the patio could be accessed from that deck so that while this house may not have an expansive deck you can walk out the kitchen or whatever that is down to the deck that patio that's down there.

MR. FULTZ: There you'd actually . . . you'd be right in front of the walkout basement door. Then you'd block the egress from the basement.

MR. SELVAGGI: So if you look at A-1 Mr. Buzak?

MR. BUZAK: Okay I see.

MR. SELVAGGI: And that's the reason why the patio is there because of the accessibility of the walkout.

MR. BUZAK: Okay which then raises the next question, where do these steps go? I mean I know where they go but . . .

MR. FULTZ: The steps?

MR. BUZAK: Yeah.

MR. FULTZ: Yeah the steps go to the mulch bed right now.

MR. WEISS: Isn't that more of a detriment to the selling of a home than the size of the deck?

MR. FULTZ: The steps going to the mulch bed?

MR. WEISS: Yeah.

MR. FULTZ: Absolutely.

MR. BUZAK: My other question is you know I've seen and I'm sure you've seen probably more than I where they have very small decks off bedrooms you know a place you can almost just open the door, go out and look and maybe you can fit a chair there but they're not intended to be used for anything. Could not, if you eliminated the steps here, could not that deck be used for that purpose? In view of the fact that you also have a patio where somebody can be outside all be it you'd have to go downstairs inside the house to get out there.

MR. FULTZ: Right. Certainly it could. I think that from my experience in building homes the platform or deck off of the rear of the primary living space floor isn't necessarily used as like a veranda it's more of an entertainment spot, a place to actually sit down. As it stands I don't know that we could fit a reasonably sized chair and maybe a small round table on the deck as it stands. So I think that the use being that it's off the first floor would probably be more in line with something a little bit larger versus you know a veranda style platform off of a bedroom.

MR. WEISS: In photo A-2 it certainly appears that the patio is large enough to hold such a table with extra chairs though. So I don't know if we're depriving this homeowner of such a luxury.

MR. FULTZ: The deprivation in my opinion would be that it's not off of their primary living space. I mean right now the deck is off of the kitchen and the breakfast area or the eating area where I

think that they would do the majority of their entertaining if not just themselves but their friends and family. Whereas the patio is off of the basement level which is more like an entertainment type room.

MR. WEISS: Go ahead.

MR. BUZAK: If this house, this particular model house is to be sold which eventually it will be sold and the one impediment to that sale is this undersized deck with stairs leading to a mulch bed, doesn't it all come down to dollars if a property owner if you said to the property owner well yeah that's fine but you know we'll knock \$10,000 off of the price because you don't have a deck and now I'm starting to sound like member Fleischner here. But you know \$20,000 or \$30,000 at some point a perspective owner is going to say I suspect and you can tell me this better than I can speculate that well you know what I'll live with that because I can save \$10,000 or \$20,000, or \$30,000 as a result of that. Is that not another way in which this problem could be solved without needing a variance?

MR. FULTZ: Absolutely but the problem that we're addressing for the variance is not the homeowner that we're going to sell it to in 103 sales it's the representation of what every other homeowner that we sell to up to that point is going to get.

MR. BUZAK: Well is going to see.

MR. FULTZ: Right.

MR. BUZAK: And but that problem is solved as Ms. Gadelha said with or as you said to her question that your sales rep. when somebody if when they finally get there and say you know this is a great house but what a silly deck this is the answer is well you're not buying this and this is not the deck this is a model and you do it. So the marketing aspect it seems to me is one that needs not be solved by a variance, even if you could grant a variance based upon marketing issues. And the salability issue which again is not a basis for granting a variance seems to be able to be handled by price as opposed to anything else.

MR. FULTZ: Objectively speaking I would agree but our model homes people tend to buy what they see. And our model homes are designed to wow people and actually be representative of what we're going to do. And you're absolutely right there are a lot of features in the home that we have to explain why they're not standard or an upgrade but this particular one we found to be a prevalent issue with a lot of the people that walk through our door.

MR. BUZAK: Well you can change the model too right? I mean you can sell this for you know a reduced price for example in my hypothetical and put the model on another lot that would have the expansive deck and you'd solve that problem would you not? If the model is an issue, because that's what people see.

MR. FULTZ: Absolutely yes it could be done. It's not something that I think that we're in the position to do though right now considering the market.

MR. BUZAK: No I understand you know what you're switching models you like that one model and that stays the model for the entire project.

MR. FULTZ: Right.

MR. BUZAK: But I suppose there are times when the model location changes because somebody comes in and says hey I'd like this one and you know if they're there and they're ready to buy I suspect that you'd have to think long and hard about saying well no you can't buy this one if you really want this one. That was a rhetorical question. Thank you Mr. Chairman.

MR. WEISS: My pleasure. Anything else Mr. Selvaggi?

MR. SELVAGGI: No I mean as I said we came in here hat in hand we've offered certainly plausible explanations and reasons for it and I mean again I think what it gets down to and what Dave was saying is you know Toll Brothers is always one of those things you walk in . . . I always think of my wife when we go in it's one of those houses that just wows you and this is . . . in fact I remember in fact I think I saw some of you at the grand opening and I remember walking off of the deck thinking you know it doesn't make . . . but that and the fact that I could look down and as Mr. Russell said see that other property owner which I you know would be a little un-nerving but again it's you know we're not trying to be pigs here and you know we're also as we said earlier just to remind you I mean if you wanted us to

deed restrict or agree that this would be this one and if the homeowner wanted to . . . I mean I think what's probably going to happen here as a practical matter and this has no bearing on the 'c' standards is when this gets sold somebody is going to come in and probably ask for a variance. Now the difference will be is they have a better . . . the self created hardship may be a little better because they can say you know that dam Toll Brothers I don't know what the hell they were thinking when they sited the house but . . .

MR. BUZAK: In the vernacular.

MR. SELVAGGI: In the vernacular yes. But that's probably what would happen because I think most of us would agree you know these people have larger decks than this. I mean and that doesn't, in and of itself, justify a variance but I do think we can agree that you know usually your deck is wider than the staircase leading to it.

MR. WEISS: Let me do this real quick let me open it to the public. If anybody from the public has anything to say at this point any questions now would be a good time. And seeing none I'll close it to the public. I think Ed had some comments he wanted to make to the Board.

MR. BUZAK: As I said earlier the standards, you've dealt with variances before so I'm not going to tell you anything you don't know but I would like to remind you that the standards are set forth in the Statute and with regard to a c-1 variance there are three different standards or three different criteria any one of which would be . . . would justify granting you a variance. And one that I think that can be considered here and I'm not suggesting it has or has not been satisfied but I think that in terms of looking at the Statute it talks about where, and it's 1c, where by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon the strict application of any regulation pursuant to this article would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the developer. We're talking about a structure here, the structure does lawfully exist on this property and you need to determine whether there's an extraordinary or exceptional situation. And then of course you have the negative criteria to be able to demonstrate that there's no substantial detriment in granting this variance to the public good nor any substantial impairment to the Zoning Ordinance and Zoning Plan. Again you've gone through this enough that I need not articulate anything further about that. But I think that's maybe the structure in which you should look at this application and determine whether the evidence supports the granting of the variance.

MR. WEISS: John?

MR. CAVANAUGH: Just to make a comment, I mean this Board now is a combination Planning Board and Zoning Board but I have been on the Zoning Board for a number of years and we've had instances where cluster developments in particular are problematic and I think you guys are trying to do the right thing to be honest with you. There's obviously a mistake that we would all recognize today had you moved the house forward you wouldn't be here. Although the other point I'd like to do is take the position of the homeowner which is if I was buying this home and it's 4,000 feet I would like to have a deck for sure and an appropriate size deck which I think is what you're asking, but I would also like to have perhaps a shed. And I don't know what the Planning Board did in the initial plan for this development of how we would cluster homes and what regulations there were around the clustering of homes regarding decks or sheds. We certainly see a building envelope but we don't really know, and the only thing I'd make a comment on is I would not be surprised if someone were to buy a home in this development and have a deck and also at some point say boy I'd really like a shed. Because as you said the age profiles in their 30's so more than likely they'll probably have children and children bring a wealth of toys and accessories that have to be stored somewhere.

MR. SELVAGGI: The Homeowner's Association documents preclude, prohibit sheds.

MR. CAVANAUGH: They do.

MR. SELVAGGI: Yeah, yeah for that very reason.

MR. CAVANAUGH: Okay so that's a plus because we've had other clusters where it wasn't clear and homeowner's came very sadly before us saying we need a shed and we need a deck and some needed a pool and a bunch of other stuff.

MR. SELVAGGI: You can't also hang your clothes out to dry in the backyard either so that's also prohibited.

MR. CAVANAUGH: So then in that space maybe you don't need a deed restriction if the design and limits are already in the agreement or for the Homeowner's Association.

MR. WEISS: Nelson?

MR. RUSSELL: I'm wondering if they can adjust the building envelope on Lot 2 to give the same separation you would have.

MR. SELVAGGI: You'd really just be pushing it back 5 feet because that's essentially what the encroachment would be.

MR. RUSSELL: But it's a fairly narrow lot there.

MR. MCGROARTY: Could I . . . I can't resist if I may. I don't think that that's fair to . . . well first of all I'm not sure that that enhances the zone plan in any event. And I don't see how adjusting or reducing the permitted lot, building envelope on Lot 2 advances the purposes of zoning. I mean I'm at a loss as to . . . I mean I appreciate again what the Board is suggesting, ways to try to mitigate this and I'm not arguing against the variance but I think we ought to leave Lot 2 out of it. The situation exists entirely on this lot and they have to deal with this lot. And only the fact that Lot 2 is vacant at the moment I think is in my mind anyway is immaterial. It's a conforming lot, it's on . . . all of these lots incidentally of course are represented on a filed plat, the subdivision exists so unless we're going to go back in or have this developer go back in and rearrange lots out there to accommodate this situation I would respectfully suggest that we not make any changes to any other lots or attempt to do that.

MR. WEISS: Rene?

MS. GADELHA: Much to Chuck's chagrin I do have to bring up Lot 2 and just ask from a legal standpoint I think it's good that no one is there but what if someone were to look at it tomorrow and we granted this deck, is there something if we grant this deck that we can put in that if someone looks at Lot 2 and wants to buy it that they can be informed that such a deck is coming until it at least is visible and Lot 2 would be aware that that is there and can consider that?

MR. BUZAK: The answer to that is yes. The difficulty is in enforcement because it would have to be some condition that really as you've just stated it and even from the applicant's point of view it's difficult for them to be able to ensure that they're sales people all remember to tell people oh you know hey there's going to be a deck there because . . . in good faith it's not necessarily that they're trying to mislead anybody but you know they're trying to sell houses and that's not paramount in their minds.

MR. WEISS: You know Rene look at it this way, they've sold ten homes I'm sure that if they get an approval they'll be building this deck somewhere around August 16 so I think we're in business.

MR. SELVAGGI: There's also another important factor with Lot 2.

MR. FULTZ: Lot 2 isn't currently available for sale we tend to buffer our models with you know the lots adjacent to them so that we're not building on that lot. So that lot is not going to be sold any time in the near future.

MR. WEISS: There you go.

MS. GADELHA: Thank you.

MR. SELVAGGI: Yeah so whoever buys it Dave would you say that deck if it got approved . . .

MR. WEISS: I'd like to wrap it up here. John go ahead last one.

MR. MANIA: Chuck if we did something with Lot 2 would that not have a domino effect on the other lots?

MR. MCGROARTY: Well again I would say to the Board the applicant has not suggested to do anything to Lot 2 so I don't think it's the Board's job to make their case for them. If they can't justify or come up with the rationale for the variances here, and I'm not saying they can't, but you need to be satisfied with the explanations you've had tonight. But I believe if your lots relate entirely to Lot 3 you know for the reasons I said a few moments ago and Mr. Mania so to your point I would say as far as the

domino effect I don't know what kind of effect it would have if you start modifying building envelopes, or lot lines or restrictions on other properties even those that are vacant at this time. The subdivision was approved by the Planning Board, by the way it is not a cluster subdivision it was approved in the R-3 zone at the time which was 15,000 square foot lots, this is actually larger than the minimum required. It was not a cluster subdivision and it was really a straight forward standard residential subdivision, at least with the single-family homes, with respect to the lot layouts. So I don't think it warrants any consideration to go back and readjust the lot layouts and obviously Toll Brothers has not asked us to do that or they'd be here for probably a lot longer and probably next time to as well.

MR. WEISS: I'm going to assume Mr. Selvaggi has nothing else to say, that you've completed your testimony and what I'd like to do is maybe open it to the Planning Board to hear a motion.

MR. MANIA: Mr. Chairman I'll make that motion.

MR. WEISS: Mr. Mania that motion was what?

MR. MANIA: To approve the variance for PB 11-06.

MR. BEDELL: I'll second that motion.

MR. WEISS: And that will be seconded by Steve. Now Mr. Buzak if we were to accept such a motion would there be any conditions?

MR. BUZAK: Other than the standard conditions I can't think of anything that the Board mentioned that I would add. But if you know I mean as you know we do these things by memorializing resolutions so sometimes as I draft it . . .

MR. WEISS: You come up with something.

MR. BUZAK: Not that I would try but . . .

MR. WEISS: And of course Mr. Selvaggi will have the opportunity to review such a document.

MR. BUZAK: He certainly would.

MR. WEISS: That being said do we have any comments or questions? Catherine roll call.

MRS. NATAFALUSY: John Cavanaugh - yes
 Joe Fleischner - no
 Rene Gadelha - yes
 John Mania - yes
 Nelson Russell - yes
 Jim Staszak - yes
 Steve Bedell - yes
 Howie Weiss

You know Mike I guess at this point it doesn't really matter but I can tell you I sat here and I don't like it. But as if you were any other homeowner I would ask the same questions which I did and we came to the agreement on where we put this deck it would be encroaching on the setback. So as a matter of fact I have a deck that's on my side so people do have decks on their side that wrap around and it does look pretty nice. That being said, I'm going to take the position that coming back with what John Cavanaugh said let's look at this as if you're the homeowner you deserve, you certainly should have a bigger deck and even though I don't like it there's technically nobody here, no neighbors that's complaining because obviously there's no neighbors there now. And if this comes down to the homeowner of Lot 2 or 4 or whenever day that comes and that's a hardship for them then that becomes your problem, it's a marketing problem you'll have to deal with and if it comes in front of this Board then we'll deal with it again. I'm going to vote yes even though I don't like it.

MR. SELVAGGI: Thank you guys.

MR. FULTZ: Thank you.

MR. WEISS: Let's bring up the next application which is PB 11-10 Woodfield at Mt. Olive Homeowners Association amendment to the Building Option Plan Route 46 and Drakestown Road Block 8400, Lot 11 (and the original block and lot number prior to major subdivision). This evening we have Mr. Mark Wetter.

MR. WETTER: Good evening Mark Wetter from Radom & Wetter representing Woodfield at Mt. Olive Homeowners Association.

MR. WEISS: Take a couple of minutes to get set up I think we're doing the same we're going to shift over to . . .

MR. WETTER: I know Catherine hasn't had enough green cards from my office over the last few days so I have a few more.

MRS. NATAFALUSY: Thank you very much.

MR. WEISS: Mr. Wetter I'm ready.

MR. WETTER: We're here on an application to amend the building option plan as it pertains to patios and decks. I have with me Michael Nolan who is our engineer; I guess maybe you want to swear him in now?

MR. WEISS: Are you going to have anybody else?

MR. WETTER: No.

MR. WEISS: Mr. Buzak would you like to swear in Mr. Nolan?

MR. BUZAK: Yes.

(MICHEAL C. NOLAN SWORN IN FOR THE RECORD)

MR. BUZAK: Would you please be seated state your name and business address for the record slowly spelling your last name.

MR. NOLAN: Michael C. Nolan (N-O-L-A-N) I'm with Chester Ploussas Lisowsky Partnership 100 Matawan Road, Matawan, New Jersey.

MR. BUZAK: Thank you sir.

MR. WETTER: Mr. Nolan has testified before this Board a number of times I assume you'll accept his qualifications.

MR. WEISS: I believe we all know Mr. Nolan. Anybody have any questions? We'll accept Mr. Nolan as a licensed engineer.

MR. NOLAN: Licensed land surveyor and planner.

MR. WEISS: And planner, well we'll do that as well.

MR. MCGROARTY: I don't think, Mr. Nolan you're not a licensed engineer.

MR. NOLAN: No I'm not I'm a land surveyor and planner.

MR. WEISS: Oh then we're not going to accept him as an engineer then would we.

MR. NOLAN: No please don't.

MR. WEISS: I thought that you just said that he's an engineer?

MR. WETTER: I stand corrected.

MR. WEISS: Oh you've got to tell me. So he's a planner okay.

MR. WETTER: I know Mr. Nolan was here before you on an informal basis to discuss this matter back in February I believe, I wasn't here. And a lot of information was shared at that evening. I would like though for Mr. Nolan to start from the beginning and discuss the original building option plan, what has transpired over the last number of years and what brought us to the point of filing this application to amend the building option plan. If you could do that Mike?

MR. NOLAN: Sure the building option plans were prepared for all of the single-family lots 357 of the dwelling units within the development. And it was prepared to show what units specifically could fit on each lot and what options they could have including cantilevered fireplaces and window placements and also some decks and some patios. Unfortunately at that time the decks were limited to a very small size approximately 6 by 9, they don't really service the homeowners as they would wish. Over the past several years, the last phases of this development were approved back in 2002. Over the last several years I understand a number of homeowners have applied for deck permits and even some for deck variances because the decks they wanted to build did not comply with the building option plans that were originally approved as part of the development. To circumvent or reduce some of the variances that were being requested and some of the zoning permits that were being requested it was suggested to the original developer and also to the Homeowner's Association that they come back with an amendment to the building option plan that would more efficiently guide the zoning department and the building department in the issuance of permits. And that's what brings us here tonight and we had several discussions with your planning consultant, your engineer and the Planning Board Secretary about a year ago came up with a plan to present revised building option plans that would demonstrate what we hope a homeowner could build, where they could build a deck. We came before this Board in December and had an informal discussion conceptually how we would approach it. Guided by that we came back in February and gave a presentation to the Planning Board, we thought at that time we could, since we only wanted to revise this plan but still be in conformance with all bulk standards and all ordinances we were hopeful that we could just revise it and submit it as an amendment administratively approved. We were further guided at that meeting to come before you with a public hearing so that everybody could be on notice and do it properly that way so here we are.

MR. BUZAK: So if I might interrupt Mr. Chairman this is for the benefit of the Board and the public although the public is probably aware of this, and it's important I think in the context of in which we're dealing. The applicant has given individual notice by certified mail return receipt requested to all 357 individual houses or properties that will be affected by this Building Option Plan. In addition to individual notice by certified mail to all property owners within 200 feet of the perimeter of the property that comprises this portion, these court homes within the development. Is that correct Mr. Wetter?

MR. WETTER: That's correct there was a total of 551 people on the properties list.

MR. BUZAK: And we had some discussion, Mr. Wetter and I and Ms. Natafalusy and Mr. McGroarty about all of this and the consensus was that since all of the property owners would be affected by this and some could look at this positively and some could look at it negatively, the better approach would be to make sure that everyone received notice individually. The other thing is that this application is being brought by the Homeowner's Association. The Homeowner's Association is controlled by a Board of Trustees or is run by a Board of Trustees and it is that Board of Trustees that authorized the submission of this application. So there was not a vote of all 357 members or however many more there may be a majority vote of plurality, a two thirds vote there was no vote of the membership of the organization to bring this application. Which was another reason why we felt it was important that individual notice be given to people, so that if they have some concerns about this or if they just want to find out about it they can come. So you should be aware that the best notice that could be given under the circumstances here and perhaps beyond what could have otherwise been done was done and the representations that are being made here are being made to the entirety of the group. Thank you I'm sorry.

MR. WETTER: Mr. Buzak is correct and in addition to that I believe about this time in 2009 the Board of Trustees sent out a survey to the homeowners asking them if they would support something like this. And a majority came back and said yes and in addition to that they've notified the homeowners through newsletters, they had a meeting here of the Association I was here just a few months ago the Board met in here and 20 or so homeowners came in. So we tried to get as much notice and support for this as we can understanding under the governing documents we have the authority to bring this application for the benefit of all and the property.

MR. FLEISCHNER: Mr. Chairman, you said a majority of the homeowners felt this was positive. What was the percentage of response?

MR. WETTER: I don't have those numbers with me it wasn't required the Board just took an extra measure to see how they felt and brought it up at many Board meetings. There was very little participation over the . . . a lot of people were supportive of it. A couple of people wondered if they would be negatively affected by it but it's a benefit to all and to the whole community and clearly to the township and that's why we proceeded.

MR. FLEISCHNER: I understand that I'm just . . . you know a lot of times things get mailed to homeowners and they don't respond and then you can say well out of 350 homeowners 10 people responded and 8 were positive. So you could say it's positive but it was only 10 people who responded so I'm just trying to get a handle on how many people really are aware of this. I mean they got the mail but . . .

MR. WETTER: It was published they all have it so . . . and I received phone calls for the last ten days since those notices went out and I've discussed it with many, many homeowners as well.

MR. FLEISCHNER: Okay thank you.

MR. WETTER: Mike so you've explained the history a little bit now explain to the Board in more detail what we're proposing as part of this amendment.

MR. NOLAN: Okay as I mentioned we wanted to approach it in such a way that we could comply with all of the current ordinances and bulk standards. So what we did was, our biggest concern was building coverage, well it was setbacks, building coverage and impervious coverage. So we created setbacks within the rear yards that would apply only to the decks. We did that by; the easiest way to describe it is taking the side lines of the house and extending them rearward to encourage deck construction in the back of the houses not on the sides of the houses. We did it so that those side yards would not encroach on any 15 foot building separations; you have a minimum of 15 foot separation from one building to another or one building to another deck. So we respected that and then we respected the rear yard setbacks and any easements that may be on the property we didn't want to encroach on any easements. Once we got past the setback issue we looked at building coverage within the single-family portion of the development and then we took it on a whole and took the building coverage of the whole development. We calculated the building coverages using the size of each building that was built compared to the overall track size and we determined that the building coverage presently is at 13.46 percent where 20 percent is permitted. If we took that excess between 13.46 and 20 percent the excess that was allowable beyond what was built divided it by 357 homes we came up with 815 square feet of extra building area could be built on each of the 357 lots. Nobody wants to build an 815 square foot deck we're not proposing that all. It demonstrated was that the building coverage is allowed for that much excess within the development without violating the bulk standard. Then we looked at impervious coverage, included the buildings, the driveways, the sidewalks, the roadways you know everything and we came up with 34.5 percent where 40 percent is permitted by the ordinance. Took that same difference of 34.5 percent out of the 40 percent permitted divided it by the 357 homes and we came up with a number of 432 square feet of extra impervious area whether it be deck or patio could be built on each of the lots provided the setbacks allowed for it and provided easements allowed for it. That's if every one of the 357 homes could accommodate a rear yard area within the setbacks and easements, and they cannot. We did that just to demonstrate what could be permitted. And then we thought of what would be reasonable or a reasonable deck size for these folks. Internally the Homeowners Association has their own regulations aside from the Township Ordinances which regulate that no deck can be larger than 250 square feet, 250 square feet I think is a reasonable number. It's a deck size of 10 by 20; 12 by 18; maybe a little bit smaller if you accommodate a landing and some steps which is about the size of a one car garage or about the size of an average homeowner's deck, I think. So we propose a maximum deck size of 250 square feet where the setbacks and easements allow for it and then we talked about patios because we to still conform to the impervious coverage calculations. Again 432 square feet could be accommodated on each and every one of the lots but we felt that was too big so we came up with a number of 350 square feet for a patio if a deck could not be built because of grade or otherwise. Or a combination of deck over patio, in no case would you have a footprint larger than 350 square feet, you know a 250 square foot deck with a 100 square foot patio next to it or a 250 square foot deck with a 250 square foot patio under it with another 100 square foot patio next to it. No footprint or shadow greater than 350 square feet. We took all of those numbers and those ideas and we transposed them onto the Building Option Plans so that if approved the Zoning Officer, the Building Department would have a clear guide, a picture to look at to say yes this lot can accommodate a deck here and it can be this size. Or no it can't accommodate any deck. Rather than flipping through ordinance books and trying to interpret things with the homeowners they'll have a clear picture of what can be permitted on each lot.

- MR. WETTER: Are they marked?
- MR. NOLAN: We have not marked these exhibits; these were part of the application that we made. Would you like them marked?
- MR. BUZAK: Yes please.
- MR. NOLAN: Catherine do you have tags?
- MR. BUZAK: No just write right on there with today's date.
- MR. WEISS: Mike are you going to testify to the exhibits? We don't need to mark them if you're not going to refer to them.
- MR. NOLAN: I was going to refer to them just to explain to you how we're showing things.
- MR. WEISS: Well that's different it sounded like you were wrapping up and we didn't need them.
- MR. NOLAN: Only if it needs to be clarified.
- MR. BUZAK: Well why don't we mark them because it may well turn out that we're going to reference them in any action that the Board may take.
- MR. NOLAN: It's a set of 7 sheets for each of the sections 1A, 1B. Do you want to mark them as one exhibit?
- MR. BUZAK: No why don't we mark each one separately so A-1 through A-7. Are they already labeled 1 through 7?
- MR. NOLAN: No actually they're all 1 of 1 for each of the sections except for 1A so that's better that we do is an exhibit for each.
- MR. MCGROARTY: I have them listed on page 2 of my report.
- MR. NOLAN: Okay and in addition to that we have a blow up of a typical cluster just for presentation purposes showing, while the Building Option Plans don't show specific deck footprints only setback footprints, the building envelope let's say footprints.
- MR. WEISS: So Mike we'll mark that A-8 then.
- MR. MCGROARTY: Mr. Chairman if I may as you're getting in the process of marking these, well let me let you mark them first then I have a question, it would be better to let you mark them.
- MRS. NATAFALUSY: Okay A-1 is sheet 1 of 1 from Section 1A?
- MR. NOLAN: Right.
- MRS. NATAFALUSY: Okay.
- MR. MCGROARTY: Mr. Chairman may I ask this it may help on the labeling.
- MR. WEISS: Sure go ahead.
- MR. MCGROARTY: Is my list on page 2 of my report accurate? If it is then we can follow that as your marking them. Is that accurate?
- MR. NOLAN: Yes it is.
- MR. BUZAK: There's only six.
- MR. MCGROARTY: There's only six? Well this one has two sheets Section A2 has sheets 1 and 2.

MR. NOLAN: Section 2A is Sheet 1 of 2 and 2 of 2.

MR. BUZAK: Okay.

MR. NOLAN: Do you want to mark each sheet individually then or that set of two will be exhibit A3?

MR. WEISS: That's correct Mike the one with two sheets is A-3 and I guess we'll title them according to Chuck's report on page 2 where A-1 will be Section I-A; A-2 will be Section I-B; A-3 will be Section II-A (2 sheets); A-4 will be Section II-B; A-5 will be Section III-B; A-6 will be Section III-C and then A-7 will be the blow up of the cluster.

MR. WETTER: Now Mike just to clarify all of the sheets there A-1 through A-6 have every single lot of the HOA correct?

MR. NOLAN: That's correct.

MR. WETTER: It shows, or depicts all of the utility easements as well as the setbacks.

MR. NOLAN: That's correct.

MR. WETTER: And then it also shows by some dark dotted line or dash lines where a deck could be built.

MR. NOLAN: We're calling that a permissible deck setback because effectively the building envelope with a deck.

MR. WETTER: And in fact some of the properties are labeled NAD correct?

MR. NOLAN: No Additional Deck could be permitted on that lot because of constraints of setbacks and/or easements.

MR. WETTER: Okay and then just for the record explain again what A-7 is?

MR. NOLAN: A-7 is a blow up of a typical cluster it was requested that we prepare this because it wasn't clear the building option plan showed the heavy dotted lines and it was kind of the appearance of, oh is that the deck, or can the deck be that big can it fill the whole backyard? No it cannot. So we prepared this to demonstrate a permissible deck setback that goes way out here but the maximum deck size of 250 square feet will fit within that but not encompass the whole area. Just a picture to clarify more of what we're talking about. And we show it on there a few different scenarios, on Lot 42 for instance here the Elmwood Model we're showing that that particular lot could accommodate the maximum deck size of 250 square feet that we're proposing as well as 100 square foot patio totally 350 square feet of

MR. BUZAK: Did you produce any reduced versions of that at all? I guess there was one back

MR. WETTER: At the last meeting we handed them out to the Planning Board, I have additional copies.

MR. BUZAK: If you have an additional one I just want to make sure I'm using the right one I'm not sure this is the right one.

MR. BUCZYNSKI: The one from last meeting that's the same plan isn't it?

MR. NOLAN: It's the same exact plan yes nothing has been changed.

MR. BUCZYNSKI: What's the date on it?

MR. NOLAN: December 8, 2010.

MR. BUZAK: Okay.

MR. NOLAN: The Building Option Plans are revised through June 23, 2010.

MR. BUZAK: Okay all right I have it thank you.

MR. WETTER: I have no further questions of Mr. Nolan.

MR. WEISS: Anybody on the Planning Board have any questions for Mr. Nolan?

MR. MCGROARTY: A couple just to clarify if I may.

MR. WEISS: Sure Chuck.

MR. MCGROARTY: First Mike on the original Building Option Plans I just want to make sure I heard what you said earlier, heard it correctly, there is a footprint for decks and patios we agree on that?

MR. NOLAN: Correct the original Building Option Plan that was approved as part of the development approvals showed decks and patios for each of the homes the problem was they were too small.

MR. MCGROARTY: They were too small but there was never a problem of confusion in terms of what was allowed per lot.

MR. NOLAN: No it was identified pictorially and also there's a spread sheet on the side of each plan that also identifies which lots could have a deck or a patio or both.

MR. MCGROARTY: This is really not a question to Mr. Nolan it's just an observation to the Board, Catherine, Gene, myself we did meet with Mike on a couple of occasions we met at the site, we looked at some of the properties I said in the report there was no consensus on the size of the deck. Mike called me and reminded me that we did reach at least amongst ourselves some tentative agreement of the dimensions that are mentioned here. That obviously doesn't mean the Board accepts that and I'm still a little . . . I had some question whether 250 square foot deck is appropriate for lots of 4,000 or 5,000 square feet that are out there in some cases perhaps even less. Also a patio 350 square feet it may all work it's just a question of you have to be comfortable that . . . and the Association obviously they're the folks that have to live there. But we just want to make sure that, I guess what I'm trying to say here is I wanted to make sure the Board did not think we arranged a deal as it were that these are the numbers. So this is for you tonight to discuss whether . . . we think some enlargement of the decks that are on the original Building Option Plan makes sense but I'm not sure if 250 square feet is the right number and you know again the question of patios, we would want to clarify as well would the patios stay within the dotted lines that have been added to the Building Option Plan or are they as a flat structure on the ground would they be permitted to expand out to within right to the lot lines.

MR. NOLAN: I can address that if I may. The patios are not restricted by the building setbacks by the bulk standards as a deck is they're more restricted by grade on each individual lot. I'm not even certain of the building permit process for a patio.

MR. MCGROARTY: Right so the concern I think there would be again these are small lots relatively speaking in terms of what Mt. Olive has experienced and the configurations of the lots are very different in order to accommodate this kind of development. If the patios have no restrictions in terms of where that structure may extend to and at a much enlarged size 350 square feet as opposed to what was on the original Building Option Plan that patio is going right to the lot lines. You could have, I mean you could have situations where people are having patios if not right to the lot line within 5 feet of a lot line. There's a question whether that's appropriate or not. Again the Association if they're comfortable with it they're the people that have to live there. I don't know if there's anybody in the audience who's got questions about that but it's a very small lot size type of development out there and I'll point out to the Building Option Plan that was designed originally was not designed by us it was designed by Chester Partnership. But again I think the rationale for enlarging the decks certainly there's some basis for that the question is what size.

MR. WEISS: Well Chuck I appreciate that I don't think anybody here you know . . . I think we certainly understand now that it was a mutual conversation and you did not design that for them. Gene?

MR. BUCZYNSKI: Yes just on that same issue regarding 250 square feet and Mike tell me if I was correct back in December 9 when we met the first time even at that day you proposed the 250 square foot in front of the Board as a conceptual plan but . . .

MR. NOLAN: Actually we had discussions at great length on the February 17 hearing before the Board and although I understand nothing was formally approved there we did leave the room with a consensus after a lot of discussion we actually came out . . . we started higher we were at 300 square feet on a deck and after a lot of discussion determined I think that 250 square feet including steps and landings was more appropriate. Given some of the concerns that Chuck raised about you know the size of the lots and the relation to the adjoining lots and so forth. So yeah Chuck and I didn't agree to this on our own we had long discussions back in February and . . .

MR. BUCZYNSKI: Well you submitted it in December too.

MR. NOLAN: Well December we just had a real informal discussion with the Board how to approach the application.

MR. BUCZYNSKI: But even then you mentioned 250 square feet.

MR. NOLAN: I think we even mentioned higher than that but the nuts and bolts discussions about the size and what I'll call is what we settled on was in February you know with discussions with this Board specifically.

MR. WEISS: Sure Joe go ahead.

MR. FLEISCHNER: Catherine can you tell me over the course of let's say 12 months how many homeowner's come in and ask for a variance to . . .

MRS. NATAFALUSY: I can tell you over the last five or six years we have had people come in and ask for permits, requesting permits for decks and we've told them that the Building Option Plan is what they have. That what's on there is what they're allowed and that's what started this process. We were not issuing any permits, I would say in the last five years for any decks, patios within the Woodfield Development.

MR. FLEISCHNER: So even if they wanted to appear before the Board of Adjustment I would go and . . .

MRS. NATAFALUSY: I can tell you that since 2004 there haven't been any applications before the Board. Prior to that I think there was one application before the Zoning Board of Adjustment for a variance. But since 2004 we haven't had any applications before the Board.

MR. FLEISCHNER: But if today July 14 someone wants to put in a larger deck they would have to come before this Board for a variance am I correct?

MRS. NATAFALUSY: No we took the option that the Building Option Plan is what they're permitted to do.

MR. FLEISCHNER: All right I just wanted to clarify that all right thank you.

MR. WEISS: Rene?

MS. GADELHA: I just had a question on what Chuck was saying regarding the limitless nature of the patio and wouldn't that impact impervious coverage and wouldn't that be an issue?

MR. MCGROARTY: I know Mr. Nolan can answer that. Rene I would say to that what Mike had said his . . . and we badgered him to go back a few times so you know we certainly would trust Michael's calculations, his analysis was that you can have a certain amount of impervious coverage overall for the development. And again this development regulates building coverage and impervious coverage on the 102 acre tract the whole development as opposed to individual lots. So I think what Mike was telling us and he'll tell me if I'm wrong, is that each lot then can accommodate a certain percentage of that overall impervious but still they haven't reached their maximum yet.

MS. GADELHA: Okay.

MR. MCGROARTY: My concern would be not so much that any individual lot would max out, I mean if 350 square feet is the maximum patio that's a fairly large patio. I would be more concerned about keeping it within the same confines as it were as a deck would be. So whatever the size is because that

was the concept with the original Building Option Plan that patios and decks were going to be in a fixed location and if we're going to allow for a larger structure whether it's patio or deck I think it would . . . the deck is controlled in terms of setbacks. We have setbacks in place to control that, we don't for patios. But I think you would have the latitude to impose some kind of controls if you were to consider larger patios. I just, I think it would be . . . I mean it's not to satisfy some arbitrary standard that may exist out there I would be surprised if the Association would be comfortable allowing patios to go wherever 350 square feet leads it.

MS. GADELHA: Well and I just wonder from a topographical standpoint if there's so much pavement and things in one spot covered because there aren't those restrictions and there's heavy rains, days of heavy rain what's that going to do?

MR. MCGROARTY: I will add to that by the way topo doesn't necessarily prevent patios from being built out there because we've seen patios built out there that are on raised platforms as it were. So you know lots get regraded whether they should be or not and so that in and of itself won't stop the size of the patio. I don't have an . . . I see Gene is about to answer . . . would answer your question about run off.

MR. BUCZYNSKI: Well I think as far as limitations I think topo does have some limitations to it you know except for when people do what Chuck had just mentioned. If you just try and stay by the existing topo that you have there it is limited and the same thing with the drainage and that's something we'd have to look at on a case by case basis when they come in for a zoning permit.

MR. WEISS: Jim?

MR. STASZAK: So basically Chuck we're going to be able to regulate a patio size in this development as opposed to regulating it somewhere else outside of this.

MR. MCGROARTY: You already do, the Planning Board when it approved this development in the beginning.

MR. STASZAK: They're just asking for an increase of that regulation.

MR. MCGROARTY: The footprint yes.

MR. STASZAK: The footprint.

MR. MCGROARTY: There are some lots as Mike said there are some lots because they . . . the rear of the property either because of the rear yard setback they can't have a deck or in some cases there are utility easements and they can't have either a deck or a patio. But the Planning Board when this was approved did regulate the footprint of all of the patios and decks. And again it was really a concept that was put forth by the developer at the time in order to accommodate the amount of units that are out there.

MR. STASZAK: What is the square footage now that's allowed?

MR. MCGROARTY: Mike?

MR. NOLAN: It's not restricted by square footage.

MR. STASZAK: Per lot by that specific lot?

MR. MCGROARTY: If you look at a Building Option Plan it has little boxes on them and that's really what it is it's been scaled off. They're probably typically what 8 by 10 something like that?

MR. NOLAN: I think we scaled them at 6 by 9.

MR. MCGROARTY: They're small and the concern we saw out there was people had barbecue units on them and . . .

MR. NOLAN: They're close to the homes, they're too close to the homes, these homes are vinyl sided.

MR. WEISS: Nelson go ahead.

MR. RUSSELL: Chuck could you repeat what you said about patios on raised platforms?

MR. MCGROARTY: Well in some cases there's been you know the slope of the yard has been modified to accommodate a patio. So that whether it's built upon blocks or additional soil brought in and regarded and so you can have a patio.

MR. RUSSELL: Because the definition we have in the regulations is that a patio has to be ground level.

MR. MCGROARTY: Well I didn't say that the patios that I described were done with the proper authorization. I just said they exist.

MR. NOLAN: That's part of what we're trying to resolve here is give the zoning department a clear guideline of what can be permitted.

MR. MCGROARTY: Yeah no I think the effort to do that is commendable and it's taken a lot of time and a lot of effort it's just a question of the sizes and again if you're comfortable with the sizes maybe some control in terms of where these structures well again the decks will be regulated but the patios at present would not be.

MR. WEISS: We have a comment from Mr. Buzak.

MR. BUZAK: I just have a question for Chuck. In the current Building Option Plan are all of the decks and patios within the building envelope or are some things outside . . . some of the patios outside of the building envelope? In the current one that exists.

MR. NOLAN: I can answer that. There are a number of circumstances where even under the original Building Option Plan no deck was permitted and that was because the rear yard setback came right up to the back of the house. So to accommodate the homeowners leaving their French doors a patio was provided behind the home in the rear yard outside of the building setback.

MR. BUZAK: Outside of the building setback.

MR. NOLAN: Yeah.

MR. MCGROARTY: Yeah I mean there's patios that are even encroaching, encroaching is probably the wrong word, but are shown and this is not your proposal now this was the original, even within the utility easements.

MR. NOLAN: That's correct the thought there being if the utility easement had to be serviced the patio could be removed and replaced easier than a deck structure.

MR. WEISS: Okay let's do this I know we've gone on a long time let's open it to the public and see if there's any comments or questions from the public based on the testimony that Mr. Nolan gave. If there's anybody from the public that's got a question? Hold on one second if you would sir you could go to the microphone state your name.

MR. HAHN: Yeah my name is Kevin Hahn I'm with the law firm of Courter, Kobert and Cohen I represent Mr. Eric Tchiakpe who is standing with me. I don't know if any of you know the situation with Mr. Tchiakpe this has been going on for a few years and I have some pictures we brought with us. He has a patio that would be still larger than what they're talking about allowed even under the amended Building Option Plan. When Mr. Tchiakpe came to the town to get his building permit for the patio he was told he didn't need a building permit, he didn't realize he needed a zoning permit so he went ahead and built it and we've been involved in this thing for about four years now. In any event I just want to make it clear or see if you guys can clarify it for us if this gets adopted tonight, because we were going to file back in 2008 a variance application for the patio and I don't know if anyone wants to see it I could pass the pictures around, and I was told there was more or less a moratorium that the town wasn't granting anymore variances for patios and decks in this development until the Building Option Plan was amended. And so we were at least in part one of the forces behind getting the Homeowner's Association behind this to come in and get this amended and now we've found out that it's going to get amended maybe in such a way that we're still going to have a problem. In terms of the size of his patio but I can say that you know even if you look at his survey his patio is uniquely situated

so it does not encroach on any setbacks it fits on his lot. I know there's different size lots out there, his property backs up

MR. BUZAK: Excuse me Mr. Hahn?

MR. HAHN: Yeah.

MR. BUZAK: Is there a question here because I think it's open for questions so if you can . . . what's your question?

MR. HAHN: The question is will we be able to come back and apply for a variance if this is passed tonight? So that my client can legally maintain his patio that he built four years ago, five years ago.

MRS. NATAFALUSY: Without permits.

MR. MCGROARTY: Well if I may two things, this is in municipal court by the way this particular; this gentleman's patio is in municipal court. And I don't know if there's any answer to, can someone come back for a variance but if the Board is inclined to amend the Building Option Plan to allow a larger structure I wouldn't want to have to be the one giving testimony looking for a variance from an amended Building Option Plans. But you know who am I to prejudge what someone's planning testimony might be in the future. I don't know if we can say you can never come back for a variance.

MR. HAHN: Well I thought I heard Mrs. Natafalusy say that that's why I'm asking you. I thought she said you're stuck with whatever the Building Option Plan is and you can't apply for variances

MR. WEISS: I don't think Catherine said anything.

MR. BUZAK: I didn't think she did.

MRS. NATAFALUSY: Excuse me I said from 2004 when people came in we said the Building Option Plan is what you have.

MR. HAHN: Right but there were variances that were granted prior to that and there were some homeowners we made an OPRA request I have the documentation there were some homeowners

MR. BUZAK: Well let me say this Mr. Hahn I think that your question is a speculative one, I think that if you're not happy, or your client is not happy with the plan that's being proposed you certainly have a right to make comments about it and seek to convince them or the Board that something ought to be modified that may accommodate you. And in answer to your question as to whether you can apply for a variance or not I think the answer is well certainly you can apply because no one can stop you from submitting the application and that how that will be handled will be determined when the application is submitted. I don't think, I'm not going to have this Board begin to speculate on you know what's going to happen if there's a variance application.

MR. HAHN: Of course not I certainly didn't ask them to do that.

MR. BUZAK: I don't know and they don't know and I think that's all premature.

MR. HAHN: I didn't ask them to do that but I had an application prepared as I said three years ago

MR. BUZAK: Well then submit it. Mr. Hahn if you have an application submit your application.

MR. HAHN: I was told I couldn't because the Board was no longer taking those applications until this was amended. That was my question. Once this is . . .

MR. BUZAK: Okay well what's your question as it relates to this application, the testimony that's been provided?

MR. HAHN: Right once this is amended will we then be permitted so the moratorium so to speak will be lifted and I'll be then able to come back with my client and seek a variance that's the question. Will I be able to . . .

MR. WEISS: It sounded like the answer was yes you would be able to do that.

MR. HAHN: Excuse me?

MR. BUZAK: You'll be able to submit an application.

MR. HAHN: Yeah that's all we wanted to know because by the way we're here because I was directed by the Prosecutor in the municipal court to try to come to this Board to get this resolved. He didn't want to deal with it in municipal court and it was his suggestion that we come before the Board and seek a resolution so that's why we're here. We're trying to resolve this it's been going on for a long time and . . .

MRS. NATAFALUSY: Just one question for me. If they do come for a variance would the Homeowner's Association as they do now have to give permission for them to file that application? You know because right now people that . . . well people that were coming in were getting approval from the Homeowner's Association prior to any zoning permits that had been issued prior to 2004 I'll just put it that way. Would that still be a process where the Homeowner's Association would have to approve a variance application prior to us looking at it?

MR. BUZAK: Well I think that's not a question that we can answer that's a question that Mr. Wetter perhaps can answer.

MR. WETTER: Honestly for the record I'm a little reluctant speaking about the matter because it's in pending litigation but I tend to think that you always need the Association approval in addition to the Township approval and that's always been the policy.

MRS. NATAFALUSY: Okay.

MR. BUZAK: Thank you Mr. Wetter I appreciate that.

MR. WEISS: Thank you Mr. Hahn.

MR. HAHN: Okay thank you.

MR. WEISS: Do we have any other questions for Mr. Nolan based on the testimony that was delivered this evening?

MR. MCGROARTY: I do have one other question when the public is done Mr. Chairman.

MR. WEISS: Okay because what I'm going to do eventually, probably very soon, is I'll ask the applicant if he's done. When the applicant is done I'll open it back to the public for any comments, input if you have any opinion, anything you'd like to tell us anything you'd like to hear before we vote on it I'll give you that opportunity. That opportunity will be coming very soon maybe right after . . . Chuck please.

MR. MCGROARTY: Mr. Nolan you had said earlier that the 250 square foot is a standard the Homeowner Association has, in what context do they have that if the footprint of the Building Option Plan or the decks on the Building Option Plan is the standard? I mean what . . . I'm puzzled what that 250 square foot . . .

MR. NOLAN: I'm not sure where it came about its internally within their regulations that they have to first approve any permit application before the town and furthermore they had a limit on the size of their decks they wouldn't allow anybody to build bigger than it. And that was in place originally they did it for years.

MR. MCGROARTY: Okay but we agree whatever they you know up until this evening and whatever happens thereafter but they may have had in their Association documents you can have up to 250 square feet but in reality all you can have is what's on the Building Option Plan.

MR. NOLAN: In reality all you can have is what the town permits and approves.

MR. MCGROARTY: Which is on the Building Option Plan.

MR. NOLAN: Right.

MR. MCGROARTY: That was what was approved.

MR. NOLAN: Correct.

MR. MCGROARTY: Right okay I just wanted to be clear about that that perhaps there was some confusion by the Association, and perhaps not maybe I'm confused.

MR. WEISS: Steve you had a question?

MR. BEDELL: Yeah for the deck size it's up to 250 how many lots could accommodate the 250? Or what do you think is you know the average size when you look at all of the lots is it 250, is it 200, or 175?

MR. NOLAN: By example I looked at Section I-A the first sheet, there are 58 lots within Section I-A of those 58 lots 15 of them will accommodate no additional deck no new deck no bigger deck because of the constraints that's 25 percent; 15 of the remaining lots can accommodate up to 250 square foot in some configuration maybe not rectangular. And the remaining 50 percent 30 of them will accommodate some size deck between 50 and 200 square feet.

MR. BEDELL: Okay so it's not like every house could have 250.

MR. NOLAN: No only about 25 percent of them by example on this Section. If I looked at every sheet I might come up with 30 percent.

MR. BEDELL: Do you think that's somewhat indicative of the other . . . somewhat indicative?

MR. NOLAN: Yeah the lot sizes the clusters are fairly typical.

MR. STASZAK: So it's approximately 25 percent of each sheet on there would accommodate a 250 square foot deck? And then what 25 percent would accommodate no increase?

MR. NOLAN: No change at all.

MR. STASZAK: So it's the other 50 percent would have an increase but not more than, not up to that 250.

MR. NOLAN: That's correct.

MR. STASZAK: Okay.

MR. MCGROARTY: But is that . . . that's for Section I-A.

MR. NOLAN: I only did Section I-A specifically if you want me to do the analysis for all of them perhaps I should have.

MR. MCGROARTY: No just to clarify I-A doesn't necessarily represent the rest of the sections.

MR. BEDELL: That's why I asked if it was somewhat indicative of the other sections.

MR. STASZAK: Right that's what we were asking.

MR. NOLAN: See this cluster unit here this Lot 59 right in the middle of the sheet?

MR. BEDELL: Yeah.

MR. NOLAN: That is pretty typical to that one, and that one, and you know you get around a curve and (inaudible) this one and this one and this one they're all the same.

MR. STASZAK: So that pattern repeats.

MR. NOLAN: It would repeat itself yeah it changes as you go around the outside of the curve and inside of the curve but it averages out.

MR. WEISS: Mr. Wetter it sounded like you were complete, you were done you had no further questions?

MR. WETTER: No further questions.

MR. WEISS: All right what I think I want to do at this point is open it back to the public at this point if anybody in the public has anything, any input, any question, any comments based on anything that has to do with this application I'll open it for you to make those comments. What you'll do is you'll step up to the microphone state your name and spell your last name for the record.

MR. PHAN: Hi my name is Wi Phan (P-H-A-N) well my family and I was questioning this because before . . . in 2010 of September

MR. BUZAK: Excuse me sir. They're going to provide testimony right not questions?

MR. WEISS: I suppose they're going to make commentary correct.

MR. BUZAK: Okay we need to swear you in while you provide your testimony so can you just raise your right hand.

(WI PHAN SWORN IN FOR THE RECORD)

MR. WEISS: Also Mr. Phan did we get your address?

MR. PHAN: It's 187 Winding Hill Drive, Hackettstown.

MR. BUZAK: Thank you Mr. Phan.

MR. PHAN: So basically in June of last year we applied to build like a 4 by 7 patio (inaudible) but it wasn't approved. It was right in the small area we even have the (inaudible) of our own block and it didn't even cross the line. We were just wondering why wasn't that permit and why was it not allowed. Even if it is approved today will we allowed to resend the application to build it? Because we were building this only for the reasons that it's a second escape because hypothetically speaking it's a front door or the door down to the garage (inaudible) there's no other way of escaping and I'm living with my two Grandparents and they're really old and they haven't been moving around. My Grandma has had knee surgery and my Grandpa just doesn't . . . he suffered heart attacks and we don't know whenever it's going to happen so we just don't know that . . . is there any way that we can build that after this ever going to be passed to be built as a second escape.

MR. MCGROARTY: It depends on the Building Option Plan are you permitted a patio in the first place? I mean we'd have to find the block and lot and find out are you adjacent to (inaudible)?

MR. PHAN: We have the block right here if you want to look at it.

MR. MCGROARTY: Sure just tell us.

MR. WEISS: Mike is that something you can answer real quick for us?

MR. NOLAN: I think so.

MR. BUZAK: Sir what's the block and lot?

MR. PHAN: It's Block 8410.

MR. BUZAK: And the lot?

MR. PHAN: 54 we have a picture right here if you want to look at it.

MR. BUZAK: When you said you were denied, were you denied by the Homeowner's Association or denied by the municipality, by the township?

MR. PHAN: We were denied by the township of the Planning/Zoning and Code Enforcement.

MR. BUZAK: Okay thank you.

MR. WEISS: Mr. Nolan would you tell him?

MR. MCGROARTY: What section is he in?

MR. NOLAN: Section I-B.

MR. MCGROARTY: I-B?

MR. NOLAN: Exhibit A-2 right at the bottom of the sheet by the title block. That particular lot shows no additional deck and I think Mr. Phan said he requested a permit for a patio. There's no restriction on building a patio on that lot in fact the Building Option Plan shows a patio as permitted on the original Building Option Plan.

MRS. NATAFALUSY: Right. So they had one patio.

MR. NOLAN: They had one patio on the original one we haven't been able to increase the deck, permissible deck setback because of a rear yard setback. I don't know if that restricts them from building a patio though.

MR. MCGROARTY: You were entitled to one, to a patio you were told you could not?

MR. PHAN: We applied for . . . well we move here in 2002 this one was previously owned by my Uncle and my Aunt bought them.

MRS. NATAFALUSY: But you had a patio on the property already.

MR. PHAN: No we never had a patio we never did that's why we're applying for one.

MR. NOLAN: It was permitted by the original Building Option Plan but I suppose the builder never installed it.

MRS. NATAFALUSY: The builder didn't build it?

MR. WEISS: So our records show that there was one there there really wasn't one there?

MRS. NATAFALUSY: It showed on the Building Option Plan.

MR. MCGROARTY: The Building Option Plan indicates that you can have one that doesn't mean there's one is place.

MR. WEISS: Gottcha.

MR. MCGROARTY: So it would appear as if the gentleman is entitled to a patio based on the size here or if you change that.

MR. FLEISCHNER: So you need to come back and go to the zoning office, am I correct and apply.

MR. PHAN: Again?

MR. BUZAK: Mr. Nolan in regard to the new plan that's being presented tonight does the same . . . is the same patio area shown?

MR. NOLAN: It is the original patio areas have not been modified on our plans. We tried to show what was originally proposed and the only alteration we're showing on this plan is a permissible building setback for the decks.

- MR. BUZAK: So the approval tonight by this Board if they so choose to approve the new Building Option Plan would not change the situation with the Phan's in terms of what was originally shown.
- MR. NOLAN: The plan still demonstrates that they can only build a patio.
- MR. MCGROARTY: And not at 300 . . .
- MR. NOLAN: Well whatever you approve.
- MR. MCGROARTY: That's right.
- MRS. NATAFALUSY: So it would be whatever the Board approves tonight would be the maximum that they can . . .
- MR. MCGROARTY: I would think if I may Mr. Chairman on that if the Board is inclined to allow for larger patios whatever the size then at some point it would probably be best to have the Building Option Plans modified. Because they still show the patio footprint or perhaps we put some notation on each of the plans.
- MR. NOLAN: That would be fine.
- MR. MCGROARTY: As you had mentioned to me about the decks as well.
- MR. NOLAN: Correct.
- MR. FLEISCHNER: But excuse me they said they came
- MR. MCGROARTY: That's different I don't know what happened.
- MR. FLEISCHNER: So what they're asking is can they in essence and maybe I don't want to speak for them, but can they come back into the zoning office and say we want to build a patio
- MR. MCGROARTY: Yes.
- MRS. NATAFALUSY: If they want to come back in and want to build a 6 by 9 patio tomorrow they'll issue a permit for it.
- MR. STASZAK: With the Homeowner's Association approval.
- MRS. NATAFALUSY: Exactly.
- MR. WEISS: They have no choice.
- MR. MCGROARTY: What the Association does is their business the town can issue the permit.
- MR. FLEISCHNER: So the answer is come to Town Hall tomorrow apply for the building permit to build your patio.
- MR. WEISS: It might be better to wait a month before . . . when the resolution
- MR. FLEISCHNER: You could get a bigger patio that's up to you but you could come tomorrow because unfortunately an error was made. It was an error it was not done on purpose it just happened.
- MR. WEISS: Does that help?
- MR. PHAN: And also my (inaudible) want to know that when we building that we're allowed to have the doors and the stairs or it's just
- MR. WEISS: No, no we're not talking about a deck.
- MR. FLEISCHNER: We're talking about a patio.
- MR. MCGROARTY: No deck on this lot.

MS. PHAN: I'm sorry I speak (inaudible). My brother is in my house, because my basement leaking, ground that's why we can't open the . . . (inaudible) basement. We have to open slide door in the flood floor and then we need to have a landing and then some step down.

MR. PHAN: My mom is saying that the way that our house was built the basement is still above ground by about a foot to 2 foot with the first level and second level way on top of that. That's what my mom is trying to say. So the patio wouldn't be . . .

MR. BEDELL: So you build a couple of steps down to the . . .

MR. FLEISCHNER: So they need two steps to go to the patio is what you're saying.

MS. PHAN: We have to open the sliding door and then . . .

MR. PHAN: Like the first floor to build it.

MS. PHAN: And just 4 by 7 feet that's it and then have landing to go down . . .

MR. WEISS: Based on what you just said that should be allowed. I'm hearing that you can still build your steps up to it and then build a patio not a deck it's a patio.

MS. PHAN: Yes.

MR. WEISS: That's fine you would have to design . . . you'll have somebody build this for you?

MS. PHAN: Yes.

MR. WEISS: Okay so have them design it with two steps up from your door to the patio. Does that work?

MRS. NATAFALUSY: Why don't you just come into the municipal building. Come into the municipal building and we'll talk about it.

MR. WEISS: Yeah that's a better idea why don't you take your specific situation to the office tomorrow or whenever you'd like and we'll work it out specifically to make sure we address your concerns. But based on the questions it is allowable it is legal.

MR. PHAN: Thank you.

MR. MCGROARTY: Mr. Chairman that's probably what happened that someone . . . maybe the Zoning Officer saw steps and thought that was not permitted. But clearly you can have a patio that you can't get access to would be unsafe. So I mean it's not a criticism of the Zoning Officer but this helps in clarifying it that's probably why it was turned down.

MR. WEISS: We'll have that taken care of for you right away.

MR. PHAN: Okay thank you.

MR. WEISS: Anybody else from the public? Seeing none Chuck do you have anything else for us?

MR. MCGROARTY: Well I would again if . . . whatever the dimensions are that the Board is comfortable with I still would feel more, I would feel more comfortable if the patio were to have some controlling factors applied to it as the decks do which is in terms of setbacks from the lot lines. Now whether it's the same as a deck I don't know.

MR. WEISS: And right now there's no restriction whatsoever for a patio to the lot line.

MR. MCGROARTY: No but there doesn't have to be because the footprint, again this is not our typical residential subdivision, these the footprint of both the deck and patio are specific they were drawn on the plans to scale and they were approved and that's what they got. So if we're allowing a larger patio if it were to be 350 square feet let's say I mean that could run the length of the house, it

could go out 10 feet in some cases it might go past the house. So it might create conditions out there that will cause difficulties later. I mean patios are not decks where you're elevated above perhaps and looking down but in some cases it may be even more intrusive because you're right there.

MR. WEISS: Do you have a number that you suggest of 10 foot or 5 foot or 3 feet?

MR. MCGROARTY: Well you know I don't think that the square footage is as much a problem taking Mr. Nolan's impervious calculations excepting them and I have no reason not to. It's not so much the square footage I'd keep them within the same, what's the best way to describe this, the same accessory structure envelope that Mike has now shown on these revised Building Option Plans.

MR. NOLAN: I think that would be to limiting Chuck especially some of these lots where the rear yard setback is right up against the home. A lot of the lots were originally only permitted to have a patio is specifically for that reason, like the Phan's their building setback comes right up to the . . .

MR. MCGROARTY: Right that's a good point so your plan you wouldn't . . . there's no envelope there for the deck because it cannot extend into there.

MR. NOLAN: Right.

MR. WEISS: You know Chuck you made a comment earlier that this is a proposal brought to us by the Homeowner's Association. They live there they certainly . . . if this is their proposal I don't have a problem with it.

MRS. NATAFALUSY: I have a question though.

MR. WEISS: Go ahead.

MRS. NATAFALUSY: Are they going to . . . certain lots are allowed a deck and a patio, are they going to be allowed a deck of 250 square feet and in addition a patio of whatever? I mean are we going to limit . . .

MR. STASZAK: My understanding was the patio was going to follow the footprint of the deck and it couldn't exceed 350 square . . .

MR. WEISS: No, no, no that's not what he said. I think the maximum footprint would be 350.

MRS. NATAFALUSY: Combined?

MR. NOLAN: Combined.

MR. WEISS: Which would mean you would have a maximum coverage of a patio of 100 square feet.

MR. STASZAK: Yes that's my understanding to.

MR. WEISS: They made it very clear that it would be a maximum 350 whether it's 250 is the maximum of the deck, 350 is the maximum on the patio.

MR. STASZAK: Yeah you could have 250 and a 350, 250 above the 350 but a maximum of 350 on the bottom.

MRS. NATAFALUSY: I thought it was going to be 350 combined according to the testimony back in December.

MR. NOLAN: That's correct and that's what we're demonstrating on this blow up and that was done in an effort to control the coverage percentages.

MR. STASZAK: So it is 350 combined?

MR. NOLAN: Combined yeah.

MR. STASZAK: So you can have 100 and 250.

- MR. MCGROARTY: No you're saying you could have a 350 square foot patio with a 250 square foot deck above.
- MR. NOLAN: Directly above it.
- MR. MCGROARTY: The footprint on the ground will be no larger than 350 square feet.
- MR. NOLAN: Correct yes.
- MR. STASZAK: Right that's my understanding.
- MR. MANIA: So it's not a combined
- MR. STASZAK: No it's not combined.
- MR. NOLAN: Mr. Chairman would it help to view these again?
- MR. WEISS: No if anybody else wants to look at that.
- MRS. NATAFALUSY: Okay so for lots only allowed a deck it would be 250 and for lots only allowed a patio the maximum would be 350.
- MR. NOLAN: That's what we're proposing.
- MRS. NATAFALUSY: That's what you're saying, that's what you are asking.
- MR. NOLAN: Yes.
- MS. GADELHA: And you're saying it doesn't matter what the homeowner's lot size . . . we're not going to look at this on an individual basis to see what is best in the land space?
- MR. BUCZYNSKI: The lot's limit itself.
- MR. BEDELL: Well the deck yeah the lot will limit the deck, the size of the deck.
- MR. MCGROARTY: Yeah see that's the thing the decks are constrained by the standards which you can't encroach, a deck cannot encroach into a rear yard setback nor can it be over an easement. The patios are shown encroaching into both easements and rear yard setbacks and encroach is the wrong word they were permitted to be there. The way it lays out though there are some of these lots where a patio of 350 square feet will go right up to the rear lot line I mean if the Association is clear about what they're asking for okay but . . .
- MR. BEDELL: A lot of condos have that where patios butt up next to each other and there could be just . . .
- MRS. NATAFALUSY: This is not condos these are single-family homes.
- MR. BEDELL: Yeah but I mean but they're close together in a similar type fashion.
- MR. STASZAK: Can we put something in there that keeps it 5 feet off of the lot line so we have a 10 foot between the two of them?
- MR. MCGROARTY: In my opinion you can put whatever you like in there that's reasonable because they're asking for an expansion beyond the original plan. I will certainly refer to Mr. Buzak but . . .
- MR. STASZAK: Would you consider that reasonable? A 5 foot buffer between the patio and the lot line?
- MR. MCGROARTY: I think there ought to be some buffer, I think there should be some.
- MR. STASZAK: So that way it's at least 10 feet because you have 5 on one side and 5 on the other.
- MR. WEISS: Mike what's your opinion on that?

MR. NOLAN: The only thing I would add to that is that some of these houses are closer to the property line than 5 feet and we had similar language in our initial discussions where we put a minimum setback, in your suggestion, put a minimum setback of 5 feet except where the existing house is already closer and then you follow the setback of the existing dwelling.

MR. STASZAK: Oh boy.

MR. NOLAN: Well it's easy to follow because it's there.

MR. STASZAK: Right.

MR. BUZAK: But then in that case if that condition were imposed there will be ability to put any patio on that particular lot. Is that correct?

MR. NOLAN: That's correct.

MR. MANIA: So it really takes care of itself if they can't put it they can't put it.

MR. NOLAN: By the existing building setback.

MR. MANIA: Right.

MR. MCGROARTY: Well no it doesn't take care of itself; it would only take care of itself if you impose (inaudible). If some of the houses are, and I agree some of the houses are less than . . . some of them are almost virtually touching the lot line that would give someone potentially the ability to pave behind the house and have a patio right at the lot line. Again . . .

MR. BEDELL: But knowing that their neighbor is right next door on the lot line then maybe that's maybe builder beware or buyer beware. If that's what they want to do it's their property to do so.

MR. MCGROARTY: Well no I don't disagree it's their property it's their Association and it does . . . I mean you are here because you are the Planning Board and the idea here is to promote good planning as well. This is a very dense development and it is ultimately (inaudible) from Mt. Laurel litigation which accounts for the density that you have there and the lot sizes.

MR. WEISS: Rene go ahead.

MS. GADELHA: So okay if we say I like the 5 or at least I'm much more comfortable with the 5 foot you know setback from the lot line and where the houses are closer let's say is it 2 feet from the line would it be awkward to still have the 5 feet? Like so it wouldn't go right up against the house so that there's a certain amount of land buffer just aesthetically and you know the norm? Does that make sense to do or should it really kind of . . . the patio be right against the end of the house and follow that? Does that make sense?

MR. BEDELL: That could even depend on where the door is to the backyard, the door could be 3 feet from the lot line you know to walk out to the patio. You know so I guess that could be eliminating factor too.

MR. NOLAN: The existing building setback is considered the prevailing setback.

MR. MCGROARTY: It wasn't really an issue I mean the patios are shown again on the plans and where they . . . out there today some maybe closer to lot lines but they seem to have a comfortable distance as it were at least none of them appear to be sitting on the lot line. The new factor here is the size so if you take the small footprint which is there today and you allow it to be quadrupled in some cases there's only so much area in the back of the house where it can go. And maybe the Association has analyzed all of this and they're comfortable with it I don't know. I'm not sure it's good planning to allow a dense development like this to have patios coming right to lot lines back to back.

MR. STASZAK: I can see problems with the way I pitch my patio to your patio . . .

MR. MCGROARTY: Yeah.

MR. BUCZYNSKI: Yeah.

MR. STASZAK: Yeah drainage problems.

MR. BUCZYNSKI: Absolutely.

MS. GADELHA: Yeah big time.

MR. STASZAK: That's why I

MR. MCGROARTY: I mean there's light and air and privacy issues and all the rest of the things that go with it.

MR. BEDELL: Maybe the size I mean 350 is a pretty big patio.

MR. BUCZYNSKI: It sure is.

MR. BEDELL: You know? Maybe you limit that to 250 as well.

MR. STASZAK: Yep that was going to be my next suggestion.

MR. BUZAK: Catherine can I . . . Mr. Chairman can I ask a question? Catherine do the Board members have these exhibits that have been marked?

MRS. NATAFALUSY: They've got copies in front of them. They've got the sets of plans in front of them.

MR. BUZAK: Okay, every Board member.

MRS. NATAFALUSY: Well I think some of them are sharing them.

MR. BUZAK: Oh okay all right because I don't have them but . . .

MRS. NATAFALUSY: It was sent to you with the

MR. BUZAK: Okay well then they didn't put it in my file.

MR. NOLAN: Chuck?

MR. MCGROARTY: Yes.

MR. NOLAN: If I may would you be comfortable maintaining whatever the prevailing setback is of the existing home as a minimum setback? I mean kind of like what we did with the deck setbacks we held the side building line extended out so if that side building line was 2 feet off of the property line we would maintain that as the deck setback. Would you similarly maintain it as the patio setback? Whatever the prevailing building setback is on that lot.

MR. MCGROARTY: What about the rear though. I mean the sides I think that's a . . .

MR. NOLAN: Okay so your concern is encroaching too far towards the rear property line?

MR. MCGOARTY: Right.

MR. NOLAN: I don't think it's unreasonable to have a setback on the rear property line that may be greater like 5 feet. I don't think that's going to . . .

MR. MCGROARTY: I was talking more about the rear I think your side line . . .

MR. NOLAN: Has to be the prevailing setback of the house.

MR. MCGROARTY: Yeah.

MR. NOLAN: And then have a restriction on the rear line to keep them a distance off the rear property line. Say 5 feet or whatever.

- MR. MCGROARTY: Someone said 5 feet and I think that equates to a 10 foot separation as Jim said that . . .
- MR. NOLAN: Yeah I don't think . . .
- MR. WETTER: That's fine with us.
- MR. MCGROARTY: Makes sense. So the deck would not extend past the plane of the house on either side and would maintain 5 feet from the rear lot line.
- MR. NOLAN: Correct and we'll make that notation on the Building Option Plans.
- MRS. NATAFALUSY: The patio.
- MR. NOLAN: We're talking about the patios. The decks are still restricted otherwise, more so.
- MR. MCGROARTY: I said deck? Thanks I meant patio.
- MR. WEISS: All right so I don't think we have any issues (inaudible).
- MR. MCGROARTY: I was just going to say decide the dimensions to make sure you're clear about it.
- MR. BUCZYNSKI: Do you still want the 250 and 350?
- MR. WEISS: Does anybody have a problem with 250 for the decks?
- MR. BEDELL: No I don't.
- MR. WEISS: All right so I didn't hear anything and certainly nothing from the public so let's accept the 250, 350.
- MRS. NATAFALUSY: And 350 for the patio?
- MR. WEISS: Right with the understanding that the maximum deck would be 250, the maximum patio of 350 and you can have both.
- MR. BEDELL: Anyone up for maybe lowering that patio size a little bit? I mean I'm even up to maybe lowering the patio size I mean that's a big patio, what are you talking 18 by 18?
- MS. GADELHA: I agree I'd love to hear from anybody who lived there to support this. I don't live there and obviously you all do and we're trying to make a decision for the betterment of the whole thing. I'd love to hear, someone just nodded their head like yeah, please come up and share something.
- MR. BUZAK: Just state your name and address for the record sir and I'll swear you in.
- MR. FOLEY: Ryan Foley 45 Winding Hill Drive I'm the lone Board member here tonight from the Homeowner's Association.

(RYAN FOLEY SWORN IN FOR THE RECORD)

MR. FOLEY: So as I was saying I'm one of the four Board members from the Homeowner's Association I'm familiar with Cathy and Mr. McGroarty and the Township Engineer we've been going through this for quite a number of years with quite a lot of our own personal time not to mention the financial impact to hire an engineer and attorney to get this done. As was stated before we started this all out with a survey of the homeowners just to get a good understanding of if this was even a good thing to do to proceed forward with and we did receive that. So the sizes that we came up with were through many discussions and time with our engineer and attorney and we feel that the testimony that they've given I mean you're looking at . . . 350 might seem like a large size patio but our planner that we hired has testified that the percentage on average per sheet that we've given here is not you know 95 percent of the homes are going to have a patio this size. So we try to come up with an agreeable size that would satisfy our homeowners. You know as I said I've been on the Board for a number of years now you know a volunteer elected person on the Board and trying to get something accomplished for

our homeowners that would greatly satisfy them and based on a five plus year moratorium that we couldn't even build on our own lots. So I was holding off any comments because I figured the only comments so far have been of the negative type and but if any positive comments of this type helps so be it.

MR. MCGROARTY: Well if I may, I don't think Mr. Nolan testified that most of the lots won't accommodate that size I thought he was referring at that point to decks. There was no indication that these lots, that all of the lots could accommodate a 350 square foot patio because again they're not going to be constrained other than what we just described.

MR. FOLEY: I'm sorry you're correct. I just have a question along those lines, if this were a planned community what would prevent a single-home outside on its own from building a patio up to a property line.

MR. MCGROARTY: In this development?

MR. FOLEY: No outside of it I mean because there are no such setback rules for patios is it only being considered because we're talking about a group of homes in a planned community that you're considering that differently than the Township's laws on those setbacks?

MR. MCGROARTY: The answer I think to that is there is a difference you're quite right actually the zoning in town have lots starting at 1 acre or in some you know existing developments 10,000 square feet but none at this small size. And I guess the other answer is when this development was approved then it was at a higher density than anything else in Mt. Olive and it was a result as I mentioned of litigation. It was the developer's proposal to do these controls that was accepted by the Planning Board. So I don't think it equates to say well in a town's residential zones which are 1 acre, 3 acre, 5 acre lots that they don't have the same constraints on decks and patios that you do. You're a very different type of development.

MR. FOLEY: And I guess just to add to that based on Mr. Nolan's calculations of not only building coverage percent but impervious coverage you know we were a significant amount below that and that was taken into account and then divided up among the available homes still giving consideration to the setbacks and what not to come up with this increased number. So I think it's still a decent number that we came up with.

MS. GADELHA: I have a question because you mentioned the surveys and you can speak to . . . how many people responded and about how many of those people are in favor of this?

MR. FOLEY: I unfortunately don't have those numbers this has been going on for so many years at one point I probably could have answered you I'm not providing that because I know and I don't want to I just don't have those numbers.

MS. GADELHA: Can you at least say like the significant majority or categorize it? I mean I know you're under oath and you don't want to give false testimony but . . .

MR. FOLEY: I would be generalizing numbers and I honestly . . . it was not of the type where it was 10 homeowners responded it would be greater than that you know on the other end of the spectrum but not to the extreme end of the spectrum. But I can't say numbers.

MS. GADELHA: Okay thank you. Thanks for getting up.

MR. WEISS: Ed did you have a question?

MR. BUZAK: Yeah I think you mentioned in your testimony that you know 95 percent, and this was an approximation I assume, but 95 percent of the lots would not be able to accommodate a 350 square foot patio. Did you say that?

MR. FOLEY: No, no I was making generalizations that I don't believe there is that great a percentage of our homes that would allow that great a size of a patio.

MR. BUZAK: Okay well that's fair enough. I guess my question is this the Board is obviously having some difficulty here with that size and it seems to me that if you go in and try to create a standard you'll take you'll reduce it to the maximum perhaps that the larger majority of lots would need as opposed to saying well we're going to put the cap at 350 and there's 2 lots that will ever have 350 but

we want to make sure they have 350 when all of the other lots will only have 250. You're probably better off doing 250 and having those people who can put 350 on if they want 350 to seek whatever approvals they need to approve for that as opposed to you know . . . I think that's some of the concern the Board has. And I don't want to hamstring you because then we're just creating more problem but if you know 75 percent of the people are going to have a maximum of 250 square feet for a patio then perhaps that ought to be the maximum and you know don't let the exception be the rule, have the rule and then have an exception to it.

MR. FOLEY: And again I don't want to speak too much for Mr. Nolan but that . . .

MR. BUZAK: Well some of that is directed to Mr. Nolan.

MR. FOLEY: I understand because we work together because that number again brought about by the bulk coverage of the whole community and that's where that number came from correct?

MR. NOLAN: That's truly where we arrived at the number from the impervious calculations and then we reduced it to be more reasonable and also thinking that you know somebody wanted a deck but they wanted a small patio at the base of the deck we wanted to be able to accommodate that. If somebody had a 250 square foot deck and they wanted to walk down their stairs and they want to have a 10 by 10 patio 100 square feet at the bottom of the stairs. The fact is that on a flat plane most of these lots probably will accommodate a 350 square foot patio. We all know this job is not built on a flat plane their going to be constrained by grading.

MR. BUCZYNSKI: If I could just add that's what I was thinking as far as conditions if we start with a 350 foot patio it's still going to be limited subject to providing adequate conveyance for drainage on the subject lots. Because if they can't just throw 350 as Mike said on a lot with a lot of slope on it so it's going to be limited.

MR. MCGROARTY: Well then that is a question though are they going to be able to regrade the lot?

MR. BUZAK: And do they come in to us every time they do that?

MR. BUCZYNSKI: I think they have to come in for a zoning permit and it has to be looked at. Otherwise you're going to have problems, you have every lot putting 350 foot patios drainage is going to get stuck somewhere.

MR. MCGROARTY: And I think Gene raises a good point though because I think unless there's some reason why someone . . . unless . . . whatever the number is and the Board puts whatever controls that are appropriate people will do . . . they will level out the backyards to do patios. So and when I say level out bring in material . . .

MR. WETTER: You need a grading permit for this don't you for a patio construction?

MR. BUCZYNSKI: Well they don't really have grading permits I think we deal with through a zoning permit it will show us the grading plan on the zoning permit.

MR. WETTER: Okay so that's required.

MR. MCGROARTY: And you know Fairways Crossing comes back to mind but are you going to have lots where you know if someone does a you know wants to regrade I mean how is it going to work logistically how is it going to work in terms of reviewing the drainage for the adjacent . . . impacts for adjacent lots? Is it going to be . . . I don't know what your zoning permit fees are but . . .

MRS. NATAFALUSY: That's what I was just thinking.

MR. BUCZYNSKI: We were just talking about that.

MR. MCGROARTY: But you know it's all of the minutia that becomes important later.

MR. BUZAK: And that's what we're trying to resolve . . . we're trying to eliminate that by doing this and I just want to . . . I don't want to be premature here in doing something, trying to solve a problem and only getting ourselves in deep. And when I say ourselves I mean the applicant as well. The idea here was to simplify the process and it seems as though at least some of the questions that we're

raising are not . . . are going to result in not simplifying it but you're keeping it the same or making it worse.

MR. BUCZYNSKI: My concern is you know if they come in for a zoning permit if you just give them a blanket zoning permit then later on after the fact there's a drainage problem and they're going to come back and say the town approved the zoning permit.

MR. BUZAK: Oh I understand.

MR. FOLEY: If I may how would you have approached that before our suggestion to increase the allowed patio size? What if there was no moratorium and . . .

MR. MCGROARTY: You were talking about a 50 square foot patio in most cases versus a 350 square foot patio.

MR. FOLEY: Well I have 100 square foot patio right now they built them 10 by 10 slabs if you have a walk-out basement so I'm just saying how would you have addressed the homeowner's requests prior to this whole process.

MR. MCGROARTY: The answer to that I think would have been if you have 100 square foot or whatever the size was the presumption here would be that when The Chester Partnership did this development originally they designed it in such a way and controlled the drainage based on the footprint that was permitted.

MR. BUCZYNSKI: Exactly and they didn't design it based on a future patio of 350 square feet so it has to be looked at.

MR. FLEISCHNER: So then it has to be dealt on by an individual case.

MR. BUCZYNSKI: Absolutely.

MR. FOLEY: I'm not disagreeing.

MR. BUCZYNSKI: Unless you want Chester Partnership put the 350 decks on all of the plans and regrade the whole site to show that there's no problems.

MR. MCGROARTY: But you see the thing is so someone comes in and they want to put a patio 350 square feet or 200 square feet whatever it might be and they need to do a little regarding and they need to elevate it 5 or 6 or whatever 3 feet or whatever the case may be. Does Gene review each plot plan then for the patio and certainly not then on the fee that is charged for a zoning permit.

MR. BUCZYNSKI: Not for \$25.00.

MRS. NATAFALUSY: It's not coming out of my budget.

MR. MCGROARTY: So these are . . .

MR. FLEISCHNER: Then you've got to change the fee.

MR. MCGROARTY: Well you can't change the fees for . . .

MR. FLEISCHNER: I understand that.

MR. MCGROARTY: You can't change the fees for Woodfield and not everything else. So it's not simple, decks are easier because generally they're just footings they're not changing the grade.

MR. FOLEY: How would you accomplish it under that fee basis for someone outside of the Woodfield Development? Say there was 20 houses randomly throughout Mt. Olive that wanted to do . . .

MR. MCGROARTY: We could spend all night with hypotheticals but if . . .

MR. FOLEY: No, no I'm just saying what's the process you would still have to deal with grading issues wouldn't you perhaps?

MR. MCGROARTY: Yeah.

MR. BUCZYNSKI: We've asked for additional monies on certain projects that needed engineering review. If somebody came in with a grading plan and the zoning department wasn't comfortable with it a lot of times they would ask for an escrow fee. It might be \$150.00 or whatever for review.

MR. FOLEY: So you have a mechanism in place already to ask for additional fees for grading review.

MRS. NATAFALUSY: It's not in the ordinance but you know if I need assistance from the Township Engineer I have reached out.

MR. FOLEY: I would think you would need that assistance on almost every patio permit in this development because of the nature of the grading.

MR. BUCZYNSKI: Right exactly.

MR. MCGROARTY: And so that's what . . . so if this goes forward and that's the arrangement then people have to understand that it's going to be an expensive permit.

MR. WETTER: No problem with that being a condition of approval.

MR. STASZAK: Mr. Buzak is that something that we can legally put into this plan?

MR. BUZAK: You know Mr. Staszak I really have to give this some thought here because I'm sort of troubled by our attempt to . . . as I understood this it was our attempt was to simplify things and it seems that we're

MR. STASZAK: And we're complicating it quite a bit.

MR. BUZAK: And I'm not critical of the Board I think all of these issues are good ones but you know I'm troubled by the fact that when all is said and done if we wind up being in the same place we were before there was a lot of effort undertaken with really no benefit. And I think before we do that we ought to try to make sure we maximize the benefit here that we wanted to achieve.

MR. NOLAN: From a perspective of zoning you truly are simplifying it. It's bringing into the aspect of a grading approval, grading review and approval which is the responsible thing to do on this property in this development because of the nature of the grading.

MR. BUZAK: So I guess Mr. Staszak the answer to your question is yes we can do it, how we do it is a little bit more complicated.

MR. STASZAK: Yes.

MR. WEISS: All right any other questions or comments? Anybody else from the public? All right seeing none I'm going to close it to the public. Do we have any other issues? I think we're still stuck on this with the patio and honestly does 250 make a difference over 350 Chuck? I think it still comes back to the bigger problem is that we might have an overall grading issue.

MR. MCGROARTY: We might.

MR. BUCZYNSKI: Oh yeah.

MR. WEISS: That 250 is still 2-1/2 times what it was originally engineered for so I just wonder if we could leave it alone and just have . . . make sure that the applicant, that the homeowner's know that for every patio permit it might cost them

MR. BUCZYNSKI: I think you've got to be comfortable with 350 or do you think 350 is too much. You'll have drainage problems either way of course you'll have less of a drainage problem most likely with 250 square foot . . .

MR. WEISS: Well you know and I think why you need a patio . . . or maybe you're right you know because you have a 250 foot deck and 100 square foot patio that's not the same as a 350 . . .

MR. STASZAK: Well you can conceivably have a 250 square foot deck and a 350 square foot patio below it.

MR. BUCZYNSKI: Right.

MR. MCGROARTY: But the deck doesn't affect the grading.

MR. STASZAK: Right oh I'm not comfortable with a 350 foot patio.

MR. BEDELL: Yeah that just seems big.

MR. BUCZYNSKI: All right so what number is comfortable to the Planning Board?

MR. BEDELL: 250.

MR. STASZAK: 250.

MR. WEISS: 250 sounds like a consensus.

MR. MCGROARTY: No we have to . . . it's perhaps not the Board's headache but we'll have to figure out I mean and maybe Gene will have to figure out perhaps what will constitute a grading plan. Because generally speaking homeowners are not going to perhaps go out and hire engineers or landscape architects to redesign it if they want to put a patio and some may but my guess is many will not.

MR. WEISS: You could have 50 patios that are being built in the next year and have a tremendous impact on the stormwater management.

MR. BUCZYNSKI: Yes.

MR. WEISS: On the entire development.

MR. FLEISCHNER: What we really have to do is I hate to say it you have to lift the moratorium and you have to say if someone wants to put a patio in they have to have a grading to do it. Because otherwise one day that wall could come down on Route 46.

MR. MCGROARTY: By the way there is no moratorium. Up until tonight and perhaps after tonight people got approved on the Building Option Plan there was no moratorium.

MR. WEISS: Joe I'm sure it was just a suggestion to wait for this hearing I'm sure that's all that was.

MR. FLEISCHNER: All right well I just think that you have to have some kind of grading plan.

MR. MCGROARTY: No Joe I think that makes sense.

MR. BUCZYNSKI: Me too.

MR. MCGROARTY: Prepared by a level of expertise and . . .

MR. FLEISCHNER: Right someone who knows grading has got to do it.

MR. BUCZYNSKI: I don't want to provide work for Chester Partnership or somebody but I think you need to have it designed by a professional because what happens we've had in the past people come in with printed drawings from just a landscaper or something you know and I think it needs to be you know they're asking for this additional benefit I think if they have to spend some money they have to spend some money I hate to say it.

MR. FLEISCHNER: This is a unique situation you know we're on a mountaintop that's different than other areas in the town.

MR. BUZAK: Well isn't another aspect to this though that when an applicant comes in and provides a drainage plan that because of the configuration of this development it's not . . . it can't only

be related to his proposal now it's got to take in neighbor's proposals and gee well we may have to put something here to you know

MR. BUCZYNSKI: In the back there's a yard behind it and the side you never know.

MR. BUZAK: Yeah.

MR. FLEISCHNER: We do that now when an applicant comes in. We say well how is it going to affect your neighbor.

MR. WEISS: It's usually a bigger piece of property to absorb that.

MR. FLEISCHNER: But we still ask those questions.

MR. BUZAK: Yes.

MR. FLEISCHNER: So why should this be any different?

MR. BUZAK: Well because this is an integrated development

MR. BUCZYNSKI: What scares me is if you knew the problems we had even during construction for these units to try and make sure there wasn't drainage problems, we had problems throughout the development putting more curtain drains, putting other drains so they wouldn't have problems between the lots and now we're going to be throwing 350 square feet of patio it's going to be a nightmare in some locations.

MR. FLEISCHNER: I agree with you Gene.

MR. MCGROARTY: Even 5 feet from a property line you know we could have conceivably a patio that's 3 or 4 feet off of the ground in some cases or perhaps even at grade 5 feet away from the property line. And you know boy talk about setting up situations for neighborhood

MR. BUCZYNSKI: You know they can submit what they want to submit but it might not get approved.

MR. MCGROARTY: That's right.

MS. GADELHA: Can we do something on the deck? I don't think anybody is uncomfortable with the deck proposal and then leave the patio on a case by case or you know or something.

MR. FLEISCHNER: No.

MRS. NATAFALUSY: No we need help.

MS. GADELHA: It's all or nothing?

MR. MCGROARTY: No but I think that's Mr. Chairman I'm wondering too if that makes sense at least to at least move ahead on the Association can perhaps leave here with a change to the decks and maybe . . .

MR. STASZAK: Come back with the patios.

MR. MCGROARTY: I don't know if we can figure out what to do with the patios yet.

MR. NOLAN: I think you still want to set parameters for the patios the only caveat being that they need an independent review. I think that's what you're suggesting an independent review but set the size parameter now so the Zoning Officer is guided at least.

MR. MCGROARTY: But what happens if, again I'm just going to put Gene's name in there because he's the Town Engineer, what happens if he decides that no that patio on that property is not going to work.

MR. NOLAN: Well I think that's part of his review is the ability to deny it because it's irresponsible.

MR. MCGROARTY: Okay so they deny it and then they appeal. So he'll have the authority to deny a permit for a deck?

MR. FOLEY: It's a drainage issue, grading issue.

MR. NOLAN: It's a health and safety . . .

MR. WEISS: Gene is it realistic to determine the negative impact on a stormwater management one patio at a time? Or do you wake up it's almost like the straw that broke the camel's back you've done 40 of them all is good . . .

MR. BUCZYNSKI: It's a case by case basis I have to look and see where it is if there's another yard behind it and what affect it's going to have if you're going to start pointing the drainage in a more defined area going on the adjacent lot. Then what happens . . . you almost have to look at where will that patio be on that adjacent lot when they come in two weeks from now. It's almost like you need a whole grading plan for all of the patios.

MR. BUZAK: Which is what the original idea was in the first place right?

MR. BUCZYNSKI: Right, yes.

MR. BUZAK: Because of all of these problems was okay let's set it up that's what it's going to be and that's it.

MR. BUCZYNSKI: That was one concern we had way back when with the original option plan.

MR. MCGROARTY: That's exactly right.

MR. WEISS: So I guess would it be a condition of approval then that a patio under the parameters of say 250 square feet would also have to have engineering approval. I don't know how else to handle it or . . .

MR. MCGROARTY: I have one other way to handle it. I would suggest you don't change the patios. Because I don't know if the Board has enough information tonight to decide and feel comfortable that you're not going to have an impact on the development.

MR. WEISS: Currently it's how much 100?

MR. MCGROARTY: It depends but the gentleman said . . .

MR. STASZAK: I would leave it as it is it's currently in the option whatever the option is now that's the way it stays tonight.

MR. BUCZYNSKI: The decks could be increased to 250 if that's (inaudible).

MR. WEISS: That would certainly resolve the stormwater.

MS. GADELHA: I would vote for that.

MR. MANIA: I would vote for that.

MR. MCGROARTY: People can always have a picnic on their lawn you know.

MR. BUCZYNSKI: It gets you through tonight it gives them something and if they want to think about it more they can come back.

MR. BUZAK: Well let's . . . hold on a moment for a second. The Association has spent a significant amount of money providing notice and while I have no problem with the Board dealing with decks to say to them I think you know and lets . . . you think a little bit more about the patios and come back here I think we have to continue the application if we're going to do that because this way then we can provide notice tonight, statement tonight that this matter will be heard at another meeting and we can then handle this issue in a more composite way. The Board may have consensus with regard to the decks and that kind of thing and that's fine you know we can sort of take a straw vote and see where we

are and that will then be you know Part A of the plan but then I think we ought to at least give it one more shot with regard to the patio aspect and see if we can wrap it up and if we can't fine then we can approve just the deck and the patios are going to be as they were and we gave it the good old college try.

MR. WEISS: But couldn't we turn to the applicant and ask him how he feels about our suggestion to increase the decks but leave the patios the way they are.

MR. BUZAK: Yes you can oh absolutely.

MR. WEISS: And if he's accepting that we just close . . .

MR. WETTER: I don't think we are I would like a minute to speak to the client. My thought as you were just speaking was perhaps that we maybe could get a vote on the decks tonight and carry it or bifurcate it whatever you want to call it to another meeting regarding the patio issue. We wouldn't need to renotice it's the same application I think based on what the Board has said tonight we need to reevaluate some things.

MR. FLEISCHNER: When could we reschedule this?

MRS. NATAFALUSY: September. I don't know how much time they'd need but it would be September 8th or the 15th are the next available meetings.

MR. WEISS: Ed?

MR. WETTER: We would prefer to have the Board rule or decide on the deck issue and we would carry the matter to the next available meeting.

MR. WEISS: But that's not going to happen. We're going to vote on one application I think the Board will most likely if you want us to we'll carry it until September but the Board is not going to vote on a portion of the meeting, a portion of this plan. That's just not going to happen.

MR. BUZAK: And understand the Board is not trying to pressure you into accepting that I think the concept is that is an application there's an issue and they really want to handle the composite issue in one approval and not you know give you an approval here and then continue the application for some other aspect. It also creates an issue in terms of you know what I do with regard to resolutions and that kind of thing.

MR. WETTER: It sounds like the concern was the patios and it's a real concern is the grading and if we were to have it as a condition of the approval that every lot that comes in for a permit for a patio is required to have an engineering review, a grading review of their patio with associated fees, etc.

MR. BUCZYNSKI: Yeah but the problem I have with that is it's almost hard to look on a case by case basis because again what's the affect on the next property of the adjacent lot? How much of a plan does the person give you for one lot to see the affect on the adjacent property?

MR. WETTER: I think they have to give you a topo of that lot and the adjacent area and regarding of that lot that keeps the . . .

MR. BUZAK: What about regarding of the adjacent property?

MR. WETTER: No, no, no you can't go onto the adjacent lot to accommodate your patio.

MR. BUCZYNSKI: Well I have to look what happens, where is the patio going to go on the adjacent lot a month from now when somebody want a patio there am I going to have a problem?

MR. WETTER: I think it has to be self contained.

MR. WEISS: Well let me just interrupt this because the engineer has spoken he's not in favor of that and therefore I'm going to assume the Planning Board is going to accept Mr. Buczynski's recommendation that that's not acceptable. So we can debate it but I suggest that that's not being an option, that's not an option. So we either give you the opportunity with certainly no prejudice to go back and come back and make a different presentation on the patios or go back . . . the other option that's laid out in front of you is the patio goes back to the way it was which was per case, Chuck I believe

that's what it was, with a 250 square foot addition or a total of a deck. Those are the options I believe that the Planning Board is comfortable with this evening.

MRS. NATAFALUSY: Mr. Chairman you're saying the patios stay as they are on the current Building Option Plan.

MR. WEISS: Yes.

MR. WETTER: Oh I misunderstood what you just suggested.

MR. WEISS: The patios will remain as they are currently which is essentially a case by case basis.

MR. BUZAK: What's shown on the current Building Option Plan the patios will remain the same.

MR. WEISS: And the decks can increase to 250 square feet.

MR. FOLEY: So if somebody wants to build a patio in excess of what's shown on the Building Option Plan it would be on a case by case

MR. WEISS: No, no, no.

MRS. NATAFALUSY: No it's not going to happen.

MR. WEISS: It would revert to what's currently in place today.

MR. FOLEY: Okay so there would be no relief or no change no amendment to the patios under you're . . .

MR. WEISS: Correct.

MR. FOLEY: Okay.

MR. WEISS: And that kind of gives the Planning Board the assurance that we're looking for when it comes to drainage.

MR. MCGROARTY: Yeah the key distinction there is the impact on homeowners with drainage.

MR. WEISS: I think the question is kind of what I said to you Gene at what point does the camel's back break? Is it the 41st patio that makes major water problems or the 28th? We don't know.

MR. BUCZYNSKI: We don't know.

MS. GADELHA: Or if four in a row build a patio and then the fifth wants it a whole new study might need to be done but then who's responsible for looking at that . . .

MR. BUCZYNSKI: If you put one patio on a site and you grade it so water gets off, what if it gets off to adjacent property exactly where that person wants to put his patio.

MR. WETTER: Well we prefer to carry the whole application.

MR. WEISS: That would be fine. I think you have a choice whatever date works for you we had September . . .

MRS. NATAFALUSY: 8th or the 15th.

MR. WETTER: The 15th worked for me.

MR. WEISS: So we'll carry this application until September 15th and no further notice

MRS. NATAFALUSY: Excuse Mr. Wetter I'm going to need an extension of time.

MR. WETTER: Yes.

MRS. NATAFALUSY: Okay.

MR. BUZAK: That's September 15, 2011 at 7:30 p.m. there will be no further notice that you will receive notice is what you have now if you have neighbors who are interested and couldn't come tonight feel free to tell them that the matter is carried to September 15th at 7:30.

MR. WEISS: Could I ask a question? What else is on the agenda that evening?

MRS. NATAFALUSY: Nothing.

MR. WEISS: So you'll be first regardless we'll make sure you get first that evening.

MR. WETTER: Thank you.

MR. WEISS: And I can tell you that based on what we're hearing tonight it does appear that the 250 square foot deck increase will be certainly not an issue. I think it's clear that the patio is the issue and I'm sure in the next 60 days or so you could figure that out and address that.

MR. WETTER: Understood thank you.

MR. WEISS: Pleasure. Any other business? Do I hear a motion to adjourn?

MR. MANIA: So moved.

MR. WEISS: All in favor?

EVERYONE: Aye.

MR. WEISS: Everybody see you next week.

(MEETING ADJOURNED AT 10:30 P.M.)

Transcribed by:
Lauren Perkins
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