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

ROLL CALL:
Members Present: Joe Fleischner, Henry Fastert, David Koptyra, Dan Nelsen, Nelson Russell, Brian Schaechter, Frank Wilpert, Jr., Howie Weiss

Members Excused: John Mania, Sandra Stotler

Members Absent: Kim Mott

Professionals Attending: Tiena Cofoni, Esq., Catherine Natafalusy, Planning Administrator/Secretary

Professionals Excused: Chuck McGroarty,Planning Consultant, Eugene Buczynski, Township Engineer, Edward Buzak, Esq.

APPROVAL OF MINUTES

December 11, 2014 Public Meeting

Motion: Joe Fleischner
Second: Nelson Russell

Roll Call:

Joe Fleischner	- yes
David Koptyra	- yes
Nelson Russell	- yes
Brian Schaechter	- yes
Howie Weiss	- yes

COMMITTEE REPORTS

MR. WEISS: Okay we have reports to go over tonight. Henry do you have anything from the Mayor?

MR. FASTERT: Nothing to report from the Council.

MR. WEISS: Okay environmental commission Nelson?

MR. RUSSELL: We didn't have a meeting last week.

MR. WEISS: Okay, Joe anything from the ordinance committee?

MR. FLEISCHNER: Nothing from the ordinance committee.

MR. WEISS: Nothing from the street naming committee and David anything from the open space?

MR. KOPTYRA: No.

MR. WEISS: That was very quick.

APPLICATION #PB 14-20 – EDWARD NEWHAUSER – (Block 4100, Lot 94)

MR. WEISS: If anybody is here tonight for application PB 14-20 Edward Newhauser that application is going to be carried until February 19 the notice will be . . . .

MS. COFONI: No further notice will be provided.

MR. WEISS: No further notice thank you.

(CARRIED TO FEBRUARY 19, 2015)

APPLICATION #PB 14-24 – LUIS GARZON – (Block 3207, Lots 8.01 & 9)

MR. WEISS: Additionally PB 14-24 which is Louis Garzon property located at 1 & 7 Forest Road also will not be heard tonight. That will be carried to the 12th of February, no further notice and that will be carried until then. So if anybody is here for those applications we won't be hearing them.

(CARRIED TO FEBRUARY 12, 2015)

EXTENSION REQUEST

APPLICATION #PB 11-13 – CEIL WEST LAKE PROPERTIES – (Block 7702, Lot 21)

MR. WEISS: With that being said let's get back on track to our extension request for PB 11-13. Good evening.

MR. DWYER: Good evening Mr. Chairman, members of the Board Patrick Dwyer from the law firm of Nusbaum Stein on behalf of the applicant Ceil West Lake Properties LLC. We're here this evening requesting an extension of an approval of an amended preliminary and final site plan that was memorialized by resolution of October 13, 2011 and we're requesting a 12 month extension.

MR. WEISS: Okay can you tell us a little bit about the delay that's causing the extension?

MR. DWYER: Part of the delay is having to do with the downturn in the economy which we hope will be coming back soon. There has been some progress made, there was a sight triangle deed that was recorded as well as a right-of-way easement which was recorded after review by township attorneys.

MR. WEISS: Can you, because I don't necessarily have a problem I just wanted to make sure everyone on the Planning Board knows which application was Ceil West. Ceil West is which application?

MS. NATAFALUSY: It's the property, the old plumbing supply place across from the lake the brown building.

MR. WEISS: Okay I know they come in under different names okay. All right I mean this is fairly straight forward and Mr. Dwyer you requested a one year?

MR. DWYER: Yes Mr. Chairman.

MR. WEISS: Do you think that's an accurate request that you think you can get started in one year?

MR. DWYER: I think so Mr. Chairman. I'm hopeful that things are going to be rolling.

MS. NATAFALUSY: Because this wasn't a use variance.

MR. DWYER: No. Well I think originally but at the amended . . . the amended wasn't.

MS. NATAFALUSY: And then the amended wasn't because the restaurants were permitted in the zone district at that point.

MR. DWYER: Right.

MR. WEISS: Did you have anything you're looking up Tiena?

MS. COFONI: Yes give me one second please.

MR. WEISS: While Tiena is looking some things up does anybody have any questions or concerns?

?: (Inaudible)

MR. WEISS: Well that's why I asked Mr. Dwyer if he thinks one year is sufficient.

MR. DWYER: Well we certainly would if the Board would consider it, would request two years I'm not sure if the Board would favorably consider that request. Which would hopefully avoid any further extensions.

MS. COFONI: Well the statute actually says the Planning Board may extend such period of protection for extensions of one year but not to exceed three extensions. So it's really contemplated in the statute that it's one year periods.

MR. WEISS: Okay.

MR. DWYER: Fair enough.

MR. WEISS: So Mr. Dwyer has requested one year and Tiena said that's certainly within reason does anybody have any questions or concerns? It doesn't appear that anybody on the Planning Board has any questions. Mr. Dwyer do you have anything else?

MR. DWYER: No Mr. Chairman.

MR. WEISS: Okay before we take action is there anybody from the public have any questions for Mr. Dwyer about the application this evening? Seeing nothing from the public I'll close it to the public and I'll ask for a motion.

MR. NELSEN: I'll make a motion 11-13 be approved.

MR. SCHAECHTER: I'll second.

MS. NATAFALUSY: Extend for one year.

MR. WEISS: Approve a one year extension to application PB 11-13. Dan, Brian thank you very much. Any other comments? Catherine roll call.

MS. NATAFALUSY:

Joe Fleischner	- yes
Henry Fastert	- yes
David Koptyra	- yes
Dan Nelsen	- yes
Nelson Russell	- yes
Brian Schaechter	- yes
Frank Wilpert	- yes
Howie Weiss	- yes

MR. WEISS: Good luck Mr. Dwyer.

MR. DWYER: Thank you.

MR. WEISS: Thanks for coming out tonight.

MR. DWYER: Good night thank you.

APPLICATION #PB 14-25 – LAKEVIEW ESTATES – (Block 7702, Lot 16.20)

MR. WEISS: Okay and that leaves us with our lone developmental matter of the evening PB 14-25 Lakeview Estates requesting a variance for the rear yard setback at 14 Salmon Court, Block 4402, Lot 16.20. If you would . . . good evening.

MR. ROTHBERG: Good evening Mr. Chairman, members of the Board, Counsel my name is Mark Rothberg from the Wilf law firm and I represent Lakeview Estates with regard to our variance application for 14 Salmon Court. As the Board may be aware this is a request for a variance for the rear deck which does not conform with setback requirements. This was the model home for the development, approximately 40 homes approximately 38 have already closed. This home is approximately over 10 years old in 2006 we received a construction and building plan sign off for the deck and we also received construction permit number 20060281dated September 14, 2006 a permit with regard to the deck in question.

MR. WEISS: Mr. Rothberg hold on one second I just want to make sure our attorney has that in case she wanted it.

MR. ROTHBERG: I have copies if anybody would like extra . . .

MR. WEISS: No I don't know if we need a copy just if you want to make a note of the permit number in case you needed it?

MS. COFONI: No I think Catherine has it.

MR. WEISS: Okay that's fine I just want to . .

MR. ROTHBERG: Okay I did make extra copies of those permits that I referenced in the event the Board . . . notwithstanding the approval and the sign off it has come to our attention many years later, almost a decade later that a variance was needed for that deck based on nonconformance. The deck was actually in the building envelope, we're seeking a variance today without you know with reserving any rights or without prejudice to bring the property in conformance with the Land Use Ordinance. The homes that were built that have decks are all in conformance so I just wanted to bring that to the Board's attention, every deck that was built in that 38 homes we're not seeking variance for any of those decks other than for the model home. The deck in question for the model home based on the configuration of the home the deck is in the building envelope and therefore we're asking for that variance. But I just wanted to make it clear this is only for the model from 10 years ago and all of the other homes that have already been built are in conformance.

MR. WEISS: Okay so let me review what you've told us Mr. Rothberg, apparently and just to put a little bit more detail on it the deck is situated 20 feet from the rear property line, the bulk standard the setback requires 35 feet therefore your requesting a variance for that construction that went over the building envelope.

MR. ROTHBERG: Correct.

MR. WEISS: The Planning Board certainly is aware that at the time of construction a permit was issued, perhaps inadvertently, regardless it was issued and now ten years later we're realizing that it did require a variance and your coming here to basically correct the record.

MR. ROTHERG: Correct and we just wanted to state that you know it wasn't our intention to not obtain whatever was required back in 2006 and you know we just wanted to correct the record and cross our "T"'s and obtain any . . .

MR. WEISS: Sure. Tiena?

MS. COFONI: I'm just trying to . . . . Lakeview Estates is the applicant I see Mt. Olive Lakeview LLC as the owner is that the developer that still owns this home? Is that what it is?

MR. ROTHBERG: Yes it's never changed.

MS. COFONI: Okay so it's still being used as the model home?

MR. ROTHBERG: Yes and the way this came up is we're seeking to list it for sale and to obtain a C.O. it was brought to our attention and in an effort of good faith we agreed to properly file the application before the Board and request the variance.

MS. COFONI: Okay.

MR. WEISS: And Mr. Rothberg I see you have a witness with you I don't know if you want to swear him in it might be necessary, it might not I don't know if you want your witness testifying.

MR. ROTHBERG: With me is Fima Rashap he's the project manager he's only been the project manager for three years so he wasn't the project manager in question when the deck was constructed but in the event any Board member had specific questions that went beyond my scope or knowledge I have my client here. So unless there's any other questions I'll waive . . .

MR. WEISS: Okay so we won't swear him in at this point unless anybody has a question.

MR. ROTHBERG: Thank you.

MR. WEISS: Okay so I'm sure you're aware of the obligation of you as the applicant you come before us requesting a variance you need to make certain proofs. Tell us a little bit about the deck and certainly help for the record just tell us about the deck and let's address the positive and negative criteria.

MR. ROTHBERG: Sure I will at this point swear in my witness.

(FIMA RASHAP SWORN IN FOR THE RECORD)

MS. COFONI: If you could state your full name spelling your last name and giving your business address for the record please.

MR. RASHAP: Fima Rashap the address would be 14 Salmon Court, Budd Lake, NJ.

MS. COFONI: Okay and could you spell your last name please.

MR. RASHAP: Sure (R-A-S-H-A-P).

MR. ROTHBERG: Mr. Rashap where are you currently employed in reference to this project?

MR. RASHAP: I mean what would you like to know about . . . .

MR. ROTHBERG: I'll ask the questions. Are you the project manager for this development?

MR. RASHAP: Yes.

MR. ROTHBERG: And how many homes are there in this development?

MR. RASHAP: 40.

MR. ROTHBERG: And approximately how many have sold to date?

MR. RASHAP: 38.

MR. ROTHBERG: And the 14 Salmon Court in question is the model home?

MR. RASHAP: Yes.

MR. ROTHBERG: And when was that built approximately?

MR. RASHAP: It was in 2006.

MR. ROTHBERG: 2006 and was it constructed with a deck that's there in existence now?

MR. RASHAP: Yes.

MR. ROTHBERG: Okay could you explain to the Board the relation between the home and the deck?

MR. RASHAP: Basically the house itself was inside the building envelope and then they come back to fill out the permit for the deck which was filled in separately which was approved by the building department so it was built in the same year in 2006 and then like the footing and everything was approved by the building department.

MR. ROTHBERG: Could you explain the configuration of the home and where the deck is located why we're seeking a variance tonight and why you can't move the deck to another location.

MR. RASHAP: Sure. Basically the deck is outside the building envelope that's why we're looking for the variance to make sure we can keep the deck.

MR. ROTHBERG: In relation to the rear of the home with the doors that open up onto that deck.

MR. RASHAP: Yeah exactly.

MR. ROTHBERG: I don't have anything further unless there are any specific questions.

MR. WEISS: Okay so I guess the question is in your opinion is there any other place on that property that you think the deck could have been constructed?

MR. RASHAP: No it can only be in the back of the house because we have our sliding door in the back from the laundry room going outside on the deck. So we need that deck in the back of the house, we can't put it on the side of the house so the only place you can put it is in the back of the house.

MR. WEISS: Do you think the deck adds value to the home?

MR. RASHAP: Sure, for sure it makes the (inaudible) looks much nicer it's a beautiful deck and it's for sure it adds to value of not just the house but I think the whole community.

MR. ROTHBERG: And is the deck that was built there is it in conformity with the other decks in the development that are existing at this time?

MR. RASHAP: For sure there's a few decks in the community basically similar to the one we built.

MR. ROTHBERG: Okay thank you.

MR. WILPERT: How far would you say the deck is to the house . . . the property to the rear; does that house have a deck as well? I know there's trees planted in between . . . .

MR. RASHAP: You mean . . . you're talking about the house . . .

MR. WILPERT: (inaudible).

MR. RASHAP: Yeah I mean the deck is on the property of 14 Salmon Court and it's about I would say . . . I mean I have to look at the plan but it's about 20 feet to the property line, at least 20 feet.

MR. WILPERT: Okay what about up to the structure?

MR. RASHAP: It's about 50 feet at least 50 if not more.

MR. WILPERT: It's really not like a huge encroachment it's . . . all the trees that are planted so it's not like your staring into the person's back window.

MR. RASHAP: Not at all.

MR. ROTHBERG: And when you say that it's in conformance with the other homes that are existing is that the reason why it didn't even come up or it wasn't brought to anyone's attention because the deck fit in to the other decks in the development.

MR. RASHAP: I mean I would assume so in 2006 obviously I wasn't here so I don't know what . . .

MR. WEISS: I'm looking at the survey it appears, tell me if I'm wrong or if you agree, that the edge of the deck is approximately 15 feet to the rock wall.

MS. NATAFALUSY: 15 feet to the rear lot line.

MR. WEISS: Well I'm not at that rear . . . I'm looking at there's a rock wall that's on the back of the property and so that's about 15 feet to that rock wall and maybe another 5 feet to the rear property line. Would you say that's accurate?

MR. RASHAP: Yes the rock wall but just keep in mind the rock wall is not the property line the rock wall is (inaudible).

MR. WEISS: I understand that, I understand that. It appears there's another 5 feet after the rock wall to the end of the property line.

MR. RASHAP: Yes.

MR. WEISS: Okay so that answers Frank that kind of puts it in perspective.

MR. WILPERT: Yes.

MR. WEISS: Henry?

MR. FASTERT: The home behind this lot is that home currently occupied?

MR. RASHAP: Yes.

MR. ROTHBERG: Okay so and also if I could state or ask, was that home purchased after the model home was built with the deck?

MR. RASHAP: Yes.

MR. ROTHBERG: Okay so it's not that they purchased the home and then the deck was built and all of a sudden they were surprised at the deck being there.

MR. WEISS: I think we've heard pretty good testimony referring to the positive criteria. The deck adds value to the home, Tiena are you satisfied that the proofs have been made on the positive criteria?

MS. COFONI: Yes.

MR. WEISS: Let's turn briefly then to the negative criteria. You touched upon it and I'll just ask the question maybe you could follow up Mr. Rashap. Are there other decks in the neighborhood similar to this one?

MR. RASHAP: Yes.

MR. WEISS: Okay so it's your testimony then that the construction or the existence of this deck does not make this home stand out any differently than any other home in the neighborhood.

MR. RASHAP: Not at all.

MR. WEISS: And this deck has no negative detriment to the neighborhood or to the enrichment of life that exists in the community.

MR. RASHAP: Not at all.

MR. WEISS: Do you have any other testimony Mr. Rothberg about the .. .

MR. ROTHBERG: Just this home was always used as a model correct?

MR. RASHAP: Yes.

MR. ROTHBERG: So everyone of those 38 other homes that were built, this model was in existence that the homeowner's actually viewed, saw and you know were not surprised by the deck having been constructed after the fact.

MR. RASHAP: Yes.

MR. WEISS: Okay. Dan?

MR. NELSEN: I don't have this in front of me right now but this afternoon I was reading about this application, and did I read that someone else was looking to put in a deck and they were using this as an example that they were told they would need . . . .

MS. NATAFALUSY: Yes. That's how it was brought to our attention, somebody else . . .

MR. NELSEN: Right does that have anything to do with this application that someone else asked? I mean that's where I thought it started.

MS. NATAFALUSY: No I was just trying to bring to the Board's attention that it was brought to our attention because somebody else came in and wanted to put a deck on his property and we told him he'd need a variance and then he said well the people next door, the model home has a deck and it's the same exact configuration. So I sent a letter to Lakeview and told them that they'd have to either get a variance or take down the deck because I wouldn't sign off on the C.O. until that was done.

MR. NELSEN: Okay it has nothing to do with the other.

MR. ROTHBERG: Correct. And at which time we spoke with Counsel and we agreed to properly file but again I can't make any representation to someone else's you know future application.

MR. WEISS: Sure.

MS. NATAFALUSY: Right everybody is based on its own merit.

MR. WEISS: And so based on what I've heard just a few minutes ago I would say the negative criteria has been established, that there's no negative detriment to the community and I think it looks like the Planning Board agrees with that testimony. And that being said I think what I'd like to do is open it to the public I understand there's some concern from the public. So what I'll do is I'll open it to any issue that's a concern to the public and anyone who would like to speak you can simply go to the podium state your name and address for the record. Please sir if you would.

MR. CHAN: My name is Kenneth Chan I live at 23 McKelvie Street and my property is right directly next to the model house that he's talking about. I felt that the deck is awfully big and because the next house next to the model house is also looking to build a deck I think that's the application you're talking about. And I think it will be too much noise when they build a deck that size because I build a deck and the deck I want to put is a 12 foot it's within my you know property limit. And I think that because there's only 35 foot . . . those houses in the back of the property they build the biggest house on the smallest lot. And then now they want to get the patio you know we should have some privacy because of the 30 foot setback. I think they should reduce the deck I didn't know the deck was built already but you know . . .

MR. WEISS: I don't know the neighborhood so I did hear testimony that the deck was there . . . was the deck there prior to any homes being built?

MR. ROTHBERG: Yes.

MR. WEISS: Or specifically was the deck built when your home was built?

MR. CHAN: Well first of all I was probably the second person who moved in the neighborhood, the houses there there's only about maybe one, two maybe two decks in the whole 40 houses. Most of the people have patios okay and that model house has the biggest deck and not everybody wanted to copy it I think that you know again it's . . . we don't have a lot of space in the back already and they put these decks . . . there's two houses that facing me in the back and if everybody got permission to build 20 foot decks it's going to be just too noisy. You know I didn't buy a house so that I sit this close to a neighbor.

MR. WEISS: I'm actually looking for your home I'm looking at a map.

MR. CHAN: 23.

MR. WEISS: You're on McKelvie right?

MR. CHAN: Yeah which is the back is facing Salmon.

MR. SCHAECHTER: So do you back up against the model home?

MR. CHAN: No the next one.

MS. NATAFALUSY: No he doesn't.

MR. SCHAECHTER: The model home if you're looking at your back yard looking towards the model, is the model to your left or to your right?

MR. CHAN: If I'm looking it's on the right.

MR. SCHAECHTER: Your back yard looking out to your back property it will be on the left.

MR. CHAN: On the right.

MR. ROTHBERG: There's a home between, there's a home between.

MR. SCHAECHTER: So you have a bigger . . . from the way the satellite looks your back yard is quite larger than their back yards.

MR. CHAN: Yes.

MR. SCHAECHTER: If I look at the satellite which I'm looking at.

MS. NATAFALUSY: Mr. Schaechter if you just look at the tax map that I sent to you you can tell where this lot . . .

MR. SCHAECHTER: I like to see the trees.

MR. CHAN: I just think that the deck should be smaller than you know . . . because other people are putting 12 foot smaller deck, this deck is so big and everybody is going to have a 20 foot and they're going to be . . . and I pay extra for the property so I have more space for whatever I need.

MR. WEISS: Henry?

MR. FASTERT: If this variance is approved does it prejudice any other variances that would be asked to build larger decks?

MS. COFONI: Each one has to support the proofs of their application on their own.

MR. FASTERT: So this doesn't in any way prejudice them.

MS. COFONI: No.

MR. ROTHBERG: If I may respond to just say number one as the Board noted this person is not adjacent directly to the deck in question. There's a home next to this home that is in between and that is the objector's issue that their concerned that if another you know if the Board approves our variance request what will it do you know to others. And all we can say is you know we're not representing any future applicants before the Board and we're simply you know seeking our variance for this specific set of facts.

MR. RASHAP: And the other thing I just want to add it's already 15 feet away from the house it's not 20 feet so it's only 15 feet away from the house which is you know there's another 23 feet to the property line.

MR. WEISS: Catherine just a quick note I'm looking at the tax map it just doesn't have McKelvie on it that was why I was asking.

MS. NATAFALUSY: Oh okay yeah it looks like McKelvie is at the other development maybe and that's where it . . . .

MR. WEISS: So I think Mr. Chan the concept here is that if this application gets approved it certainly doesn't mean that everyone else can get the same thing. Whoever comes before us with an application for a deck for example would have to make certain proofs. We're aware of the development it's, Catherine it's an R-4 I believe?

MS. NATAFALUSY: It's in the R-2 zone but it was a cluster development.

MR. WEISS: R-2 cluster so it's a 10,000 square foot lot which is fairly common in Mt. Olive. And so this Planning Board does hear this quite often and we do understand that those elect to purchase a home, and certainly there's many people on this Planning Board that have homes on 10,000 square foot lots, there's a certain element that you have to assume. You don't have that luxury if you will to live in the woods.

MR. CHAN: No, no I'm not saying that I'm mean I think the 35 foot setback is there for privacy reasons so if we extrude that I'm just requesting them to put a smaller deck up not a 20 foot I mean I don't know what the property lines requires them to do. Because they were saying earlier as I was walking in there's another proposal, another request for a variance using the same standard and I could pretty much assume that it's two houses next to me.

MR. ROTHBERG: I could represent that I have no other application pending or planning on being . . . .

MR. CHAN: Well they were saying that there was another variance request.

MS. NATAFALUSY: What I said was that somebody asked about putting a deck up and I told him he needed a variance and that's what brought this up. So there's no application before the Board. This deck is 15 feet in depth it's not 20.

MR. FLEISCHNER: And I can assure you that this Board views each application by itself. Whatever the outcome of this application tonight has no bearing on any other application should one come before us. We view it just on the application before us. There's no guarantees if someone else wants to come there's no guarantee that they even get a variance. It all depends on which way the documentation is presented.

MR. WEISS: I think the feeling of the Planning Board Mr. Chan is that when we look at the bulk standards of this zone although it's the rules that are in place of the zone, it's a guide for us. So when someone builds or owns a home in this type of zone there are certain standards namely a deck has to be within a certain envelope and we expect that constructed would be of those items that are normal, everyday to a home, a deck, a swimming pool, a patio so on and so forth. If they wanted to build a barn for horses that of course would be not allowed, we would take certain other things into effect it's very hard for me to come up with an example but a deck is a use a normal use in the neighborhood like this. And so when we have an applicant who exceeds the standard by I guess its 15 feet over the line, over the building envelope?

MS. NATAFALUSY: The whole deck is in the . . . .

MR. WEISS: The entire deck so 15 feet over. We have to weigh the pros and the cons it's a 15 foot deck and it's over the building envelope.

MS. NATAFALUSY: Right.

MR. SCHAECHTER: And it's been like that since day one.

MR. WEISS: So essentially from our position as Land Use in a Land Use perspective we have to kind of weigh the pros and the cons and does it really effect, and we understand that you don't like it because it's a small lot and the homes are kind of close together and we understand that that's a concern. In this case we have to kind to weigh, and each member of the Planning Board will weigh the testimony that was given and do we individually feel that it's going to negatively affect the quality of life. It's very easy for us to say that we don't live there. So I don't want to down play your concern I just want you to understand that there's certain limitations that the Planning Board takes into account when we make a decision like this. Again it's our goal to protect the integrity of the zone of the Master Plan this is zoned for homes 10,000 square foot lots and we expect to see like I said earlier swimming pools, decks and patios.

MR. CHAN: Right I just didn't think why did they build it and looked at the plans and see all the perimeters they could have built it on the side, or somewhere else not so that it doesn't exceed. But I don't know what the property dimension looks like but you know so why would they put it right in the back you know and mess everybody else up.

MR. WEISS: I don't mean to interrupt but that's always my train of thought and if you heard I asked that question, I asked Mr. Rashap if there's any other place that that deck could have been built.

MR. CHAN: Well if it's built already of course you're going to say no we can't build it anywhere else.

MR. WEISS: I suppose in this case perhaps there's a little bit of truth in what you're saying, it's also not up to us. You know sometimes you can look and say the deck can easily be built somewhere else on the side but then it doesn't make sense because the access to the house isn't on the side and there's a lot of factors with it. So that's a legitimate question it's one I usually ask myself. The only thing I can is that the gentleman is under oath and he said that there was no other place this deck could have been constructed. And you're right this is a unique situation that it's already built, this is unique but it's not uncommon that we address applications like this where something has been constructed improperly, and I say that with an asterisk because I understand why it was constructed, but we have to do the best that we can do under the situation. I don't want to give an opinion of the Planning Board I just want to give you an understanding of the way the Planning Board thinks and puts some thought into it. Again giving you confidence that if anybody else comes, they're going to have to prove to this Planning Board why the deck, if it does require a variance, is going to be built right there and if it's going to affect the quality of your life. You'll have the opportunity to say by building this deck and issuing this variance it's going to encroach into the quality of my life or whatever you have to say about it we will take that into effect. I think what works against you slightly is that your property is not adjacent, it's not right behind, it's like two houses over. Not that you don't have the right to object to it but we have to consider the proximity of your house to this deck. And so I just give you some thoughts I don't know if anybody on the Planning Board has any other comments for Mr. Chan. Dan?

MR. NELSEN: I seriously doubt that this deck would be approved today seeing how the entire deck is outside the building envelope. I think your fear of that is not necessary this deck in all probability would never happen today. I also think that the fact that perhaps in error our building department or our building inspector approved the design of the plans of the deck already. I think that weighs heavily on my decision anyway and that it's been there ten years.

MR. WEISS: Thank you Dan I understand your opinion is that of your opinion, I know we haven't seen we didn't really see the plans and the hearing of that deck and I know you said it wouldn't have been approved . . .

MR. NELSEN: I seriously doubt it would be approved today.

MR. WEISS: Okay.

MR. NELSEN: Considering it's 35 feet . . . the back of the house is 35 feet from the property line.

MR. WEISS: I'll just say that's certainly your opinion for the record.

MR. NELSEN: Should it not be yours?

MR. WEISS: That would be very hard to answer Dan because we haven't really gone through the full testimony because of the situation. So it's there as Mr. Chan clearly reminded us it's already there so it's very hard to say what we could have done. But I certainly as always respect your opinion.

MR. NELSEN: Thank you.

MR. WEISS: Mr. Chan did you have anything else you wanted to speak about?

MR. CHAN: No I just you know I just think that the builder should have had more control, they had control but if there's a screw up, mix up somewhere a mixed signal I mean and it happened the way it is but it is still in my opinion still I object it but you know you guys have the ultimate say you know?

MR. WIESS: Okay thank you. Does anybody else from the public have anything? Sir if you would come to the podium state your name.

MR. LAM: My name is Yau-Ting Lam I actually live at 12 Salmon Court the house right next to the model home and also behind Mr. Chan's house. And the reason that this brought to your attention is actually my fault in a way because I want to do a deck for my kids. I have four kids I moved from the city and I want to you know have a family in Mount Olive and that's the reason why. We came

to this town and we said hey you know what it's great it's a great place to raise our family. So we went to the model home and we saw the deck and said wow it's gorgeous the lake is awesome. So my wife and I decided to . . . let's buy a place, let's build a house right next to the model home and build it exactly like the model home. And when we're building the house, when we spend all of this money our savings to build a $650,000 home the builder at that time it's actually Fima's father he passed away unfortunately a few years ago but the reason is that when we bought the house the builder told us that he can build a deck. We assume it's okay to build a deck it's my first time buying a home I have no idea about the building envelope. Everything is completely new to me I'm sorry. So I tried my best to follow up to do everything I can to file the paperwork and I just want a deck for my kids. If you look at the house the back of the house is actually on a slope, the entry of the house is actually on the second level. And the reason why I want to build a deck is that I want my kids to feel safe to go out. Right now I only have a little tiny, this big.

MR. WEISS: So let me just interrupt Mr. Lam and I do want to just comment that you claim that you're just a first time homeowner and you don't know anything about the building envelope. Don't feel bad most people who are standing in your position have no idea what goes on.

MR. LAM: Yeah thank you I'm trying to be as honest as I can.

MR. WEISS: I just want to maybe interrupt you a little bit saying if the day comes that you come with an application and you have the right to build what you feel you need for your home and your family. If a variance is required you would have the right to the same process. I prefer that you don't testify or don't tell us about your . . .

MR. LAM: Oh okay, okay I gotcha just . . .

MR. WEISS: Only because that's not really the issue at hand. I know that . . . I appreciate you coming and telling us that it was your concern that you were the one that wants to build a deck . . .

MR. LAM: It's actually caused by me so I feel a little guilty that's why I'm here tonight.

MR. WEISS: Well I think that Mr. Chan as all of the other neighbors that live 200 feet by your home, if the day comes that you apply for, go for an application to build such deck and you need a variance all of the neighbors will be notified and all of those neighbors will have a right to speak up or speak out on your plan if that day comes. And the only advice I can certainly give you is do your best to work within the building envelope, perhaps if you're not sure of it come to the Construction Official, hire an engineer perhaps, do your due diligence before you come to the Planning Board. And when that day comes and we'll welcome you back at that point.

MR. LAM: Thank you. Actually as I said the deck is actually very pretty it adds value to our development and actually that's more than two decks in the development at this point. I just wanted to verify it. Actually from what I know, from what I can see without intruding on other people's privacy it's about at least four decks that I know of that is actually built at this time.

MR. WEISS: Okay Catherine how many of those decks do you think needed a variance?

MS. NATAFALUSY: I would hope no other deck needed a variance.

MR. ROTHBERH: I could address that and I could state that none . . . and I think I alluded to it earlier that some homes in the development, there are 38 that have been sold already some of them have decks, some of them don't have decks. Mr. Chan has a small deck that was built and all of them are in conformance. So I just wanted to state while I . . . .

MR. LAM: Actually I want to tell you actually all of the decks actually applied for permit and variance; actually they don't need a variance. I asked all of the owners they actually said they applied for the permit everything is legit.

MS. NATAFALUSY: The lot sizes are different.

MR. WEISS: The reason I asked that question because I'm not sure if the builder included decks and those decks were approved or if any homeowners after they bought the home from you came in and applied to our building department.

MR. RASHAP: It's actually both some homeowner's came to me and when I build the house for them they would include it with the decks, some homeowners just build it after they moved in on their own.

MR. WEISS: Okay which you're out of the picture that way.

MR. RASHAP: Yes.

MR. WEISS: Okay.

MR. RASHAP: And so I can say there's a few beautiful decks which is much, much bigger than mine but it's neither here or there.

MR. WEISS: Right okay. Thank you Mr. Lam.

MR. LAM: Actually I don't feel like the deck is intruding in anybody's privacy and actually it adds safety to the patio. Because the walk out patios require a certain distance in order to save the exit to the back yard.

MR. WEISS: Perfect.

MR. LAM: Thank you that's all I have to say.

MR. WEISS: Thank you. Anybody else from the public have any comments? Seeing none . . . oh I'm sorry, sir if you would come to the microphone and also would you state your name and spell your last with your address for the record please.

MR. MOHAPATRA: Hi I'm Rajdeep Mohapatra (M-O-H-A-P-A-T-R-A) I live at 10 Salmon Court, Budd Lake.

MR. WEISS: Okay.

MR. MOHAPATRA: So we also intend to build a deck in the back of our house so you know I believe we will go through the same process and I believe we will be granted . . .

MR. WEISS: The interesting comment I could make for you is that every single piece of property is unique in its own way. Very few are exactly the same size and have the same shape and topography and slope and all of those things will factor into a variance request if it needs it. Some homes of equal size can probably hold a deck without any variance and other won't. It all depends on your survey, and on your property, and again the same advice I gave to Mr. Lam as you feel is the appropriate time for that deck construction I would certainly hope you would do your due diligence and plan it accordingly. But if a variance is what you need there's a process in place for you to come and we'll address that as well when it comes.

MR. MOHAPATRA: I understand.

MR. WEISS: Perfect okay thank you. Anybody else from the public? Okay seeing none I'll close it to the public. Anybody on the Planning Board have any other questions?

MS. NATAFALUSY: I don't have a question I just want to put it on the record that the property is at its maximum for building coverage so any further improvements to this property in the future for building will require a variance. So if anybody wants to put an addition or put a shed or anything like that that would be building coverage and they'd require a variance for that.

MR. ROTHBERG: I think our intention is to sell it.

MS. NATAFALUSY: But for future owners I'm putting it on the record.

?: Impervious coverage?

MS. NATAFALUSY: The impervious coverage is acceptable but building coverage is at its maximum with the deck.

MR. WEISS: Yeah it's at 19.7 on a 20 percent. I guess it's an interesting thing, we all know Mr. Rothberg that there's no obligation for you to notify the buyer of the model home and so we're not asking you to write any kind of note or memo to a perspective buyer of that model home. The record will be clear that that home is basically at full building coverage at 19.7 percent and Catherine's comment was really just for the record.

MS. NATAFALUSY: Right.

MR. WEISS: We know that would be inappropriate for us to have you tell a buyer. It's the due diligence of the buyer.

MR. ROTHBERG: And the home has a basement so they don't have to build out on the structure.

MR. WEISS: Well we've seen it all. We might agree but the homeowner that buys it might want to come in and . . . .

MR. ROTHBERG: My client has been very happy with the model all of these years and never felt the need.

MR. WEISS: Never say never as we know.

MR. ROTHBERG: Right.

MR. WEISS: So for the record Catherine thank you that's an excellent point. Do you have any other testimony or anything else you want to say?

MR. ROTHBERG: No thank you for hearing our application.

MR. WEISS: Okay thank you. So before we go to the Planning Board Tiena do you have any comments that you want to . . .

MS. COFONI: No the one thing you know I'll make note of a lot of the testimony but I will make note of what Catherine just said for the record with regard to the building coverage.

MR. WEISS: Okay and certainly with no obligation to the builder.

MS. COFONI: No just make note of it in the resolution.

MR. WEISS: Perfect. Any other comments from the Planning Board? Seeing none let me entertain a motion for application PB 14-25.

MR. NELSEN: I'll make a motion to approve 14-25.

MR. WEISS: Thank you.

MR. RUSSELL: I'll second it.

MR. WEISS: Nelson thank you. Any comments? Seeing none Catherine roll call.

MS. NATAFALUSY:

Joe Fleischner	- yes
Henry Fastert	- yes
David Koptyra	- yes
Dan Nelsen	- yes
Nelson Russell	- yes
Brian Schaechter	- yes
Frank Wilpert	- yes
Howie Weiss	- yes

MR. ROTHBERG: Thank you very much have a good evening.

MR. WEISS: Thank you have a good evening. That does bring a conclusion to our meeting this evening if anybody has any new business or open business they'd like to discuss you can certainly do so. Anybody from the Planning Board have anything to discuss, if not I will entertain a motion to adjourn.

MR. FASTERT: So moved.

MR. SCHAECHTER: Second.

MR. WEISS: Thank you. All in favor?

EVERYONE: Aye.

MR. WEISS: Good night we'll see you next month.

(MEETING ADJOURNED AT 7:46:22 P.M.)

Transcribed by:
Lauren Perkins, Secretary
Planning Department