

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

ROLL CALL:

Members Present: Joe Fleischner, Brian Schaechter, Henry Fastert, John Mania, Dan Nelsen, Nelson Russell, Howie Weiss

Members Excused, Sandra Stotler, David Koptyra, Frank Wilpert, Jr., Kim Mott

Members Absent:

Professionals Attending: Tiena Cofoni, Esq., Eugene Buczynski, Township Engineer, Catherine Natafalusy, Planning Administrator/Secretary

Professionals Excused: Edward Buzak, Esq., Chuck McGroarty, Planning Consultant

Roll Call:

Joe Fleischner	- yes
Brian Schaechter	- yes
Henry Fastert	- yes
Nelson Russell	- yes
John Mania	- yes
Howie Weiss	- yes

MR. WEISS: Ok. Tonight we have two resolutions. The first one is PB 15-13 Jersey Girl Brewing. I believe we have made some changes to that.

MS. COFONI: Yes. I'll go through those. There's just a couple minor corrections. In the fourth where as clause I corrected Mr. Aaron's name to be spelled properly....Aaron.

MR. WEISS: I do have to stop you there. On the third where as it was missed.

MS. COFONI: Oh, ok. I will correct it there too then.

MR. WEISS: Should I have (inaudible).

MS. COFONI: No, you don't....yeah you can do that.

MR. WEISS: Just change it...

MRS. NATAFALUSY: Just initial it.

MS. COFONI: Yeah.

MR. WEISS: Ok.

MS. COFONI: Ok.

MR. WEISS: Got it.

MS. COFONI: And then Paragraph 3 the second sentence is being deleted and instead it's going to say "The applicant is licensed to brew no more than 50,000 barrels of beer per year." The former sentence was "A microbrewery is one that brews less than 20,000 barrels of beer per year." And that's not...I guess it's true but in this case, because of their license they can do less than 50,000. In Paragraph 6, the word general was changed to generate. The sentence is "The applicant's planner testified further that the proposed microbrewery does not have the same negative impacts that other General Industrial uses may have particularly heavy manufacturing that may generate off-site impacts."

MR. WEISS: Got it.

MS. COFONI: And Condition F that was changed and I'll just read it into the record. "In the event that additional mechanical equipment beyond what is currently shown on the plans is needed to be installed on the roof of the building or outside of the building, the applicant shall return to the Planning Board for requisite amendments to the site plan approval previously granted for this building." And lastly, G. We added the word applicable. "The applicant shall comply with all applicable federal and state dust explosion requirements." That was G. That's all of them.

MR. WEISS: So for the record my version here is in compliance with exactly what you read with the exception of the third "where as" which I changed and initialed.

MS. COFONI: Maybe I'll just reprint that page too Catherine...if you wanted to just do that.

MRS. NATAFALUSY: That first page?

MS. COFONI: Yeah. But you can still sign it.

MR. WEISS: Ok. With those modifications, would someone like to make a motion?

MR. FLEISCHNER: I'll move we approve PB 15-13, Jersey Girl Brewing.

MR. SCHAECHTER: I'll second that.

MR. WEISS: Thank you, Joe and thank you, Brian. Any conversation? Seeing none. Roll call.

Roll Call:

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

MR. WEISS: Ok. Our second resolution is PB 15-18, Dave Gunia. We have that resolution. There's no changes to that. So if someone would please move that.

MR. FLEISCHNER: I'll move we approve PB 15-18, Dave Gunia.

MR. WEISS: Thank you, Joe.

MR. RUSSELL: I'll second it.

MR. WEISS: Thank you, Nelson. Any conversation? Seeing none. Roll Call.

Roll Call:

Joe Fleischner	- yes
Brian Schaechter	- yes
Henry Fastert	- yes
Nelson Russell	- yes
Howie Weiss	- yes

COMMITTEE REPORTS

MR. WEISS: Ok. Now let's move into some committee reports. We have they Mayor's representative.

MR. FASTERT: Nothing from the Mayor.

MR. WEISS: We waited a month for that.

MR. FASTERT: I know. Just to say that. I practiced it too, Howie.

MR. WEISS: In the same light, Mr. Mania, anything from the Council?

MR. MANIA: Yeah, we will be voting this coming Tuesday at the meeting to replace a vacancy on the Council. As we all know, Ray Perkins resigned in his move to the Carolinas. So we have three names that we will be picking one of the three this coming Tuesday.

MR. WEISS: Perfect. Thanks, John. Environmental Commission, Nelson.

MR. RUSSELL: No report. Joe, Ordinance Committee?

MR. FLEISCHNER: No report.

MR. WEISS: I have nothing from Street Naming and Kim's not here for Open Space. I just wanted to remind everyone, Catherine's request at last meeting was trying to turn those microphones up because transcription has been difficult with all the pages. All the papers moving so...as long as we're being picked up try not to put the microphone down. It's causing a little headache. You're looking at me like you don't know what I'm talking about.

MS. COFONI: I do. I'm thinking of something else.

MR. WEISS: Ok. Alright we have two extension requests. The first one, PB 11-27, Tomasa Jallad, coming in for an extension of a variance approval at Block 7100, Lot 66 at 134 Flanders-Drakestown Road. Tonight we have Mr. Selvaggi on behalf of the applicant. Michael, welcome.

MR SELVAGGI: Yes, thank you, Mr. Chairman. Michael Selvaggi from Lavery, Selvaggi, Abromitis and Cohen. I think we're all pretty familiar with this application. I tried to in the letter that I submitted in support of the request to go through the tortured history here. We believe that the extension is certainly necessitated by circumstances well beyond control of Mr. and Mrs. Jallad. I think at this point the inordinate delay and the unexpected delay we had dealing with the DEP was certainly something that I had never experienced. A year and a half for them to come out to do a site visit was.....I just never would have thought that so. The applicable ordinances haven't changed, nothing is proposed to change with respect to the plan you saw for the bulk variances is on the existing brick home that's on there. So I think given the context of your ordinances which allows for the granting of these extensions. We would respectfully request another year. We actually have our building permit application pending so we're hoping to get started on that.

MR. WEISS: Looks like you've made some very nice progress with the former General Store. It looks to be stabilized and well on its way to being rehabilitated and it's always a pleasure to drive by that and see it so. Certainly I'm excited that the potential of what's going to happen next so I have no issues. Michael, I think your letter was very explanative and I don't see there's an open issue. Does anybody on the Planning Board have any concerns?

MR. SELVAGGI: By the way, Mr. and Mrs. Jallad are here if anybody had any questions.

MR. WEISS: No, it's fairly straight forward. I think, like I said, the letter explained everything that's a problem and it is difficult. I'll leave it at that. As we understand the process.

MR. BUCZYNSKI: Just a minor thing. In Michael's letter he mentioned about the exemption they need (inaudible) review that. Just for the record, if we did review it and it was approved June 10th of this year. So that's taken care of.

MR. SELVAGGI: That's what really prompted this is shortly after that was issued we were hoping to get the building permit. Your ordinance which has a sunset provision on the variance, that's what prompted us to come.

MR. WEISS: Ok. So, with no comments or questions, I will then entertain a motion.

MR. MANIA: I'll move for the approval of the extension request for PB 11-27.

MR. WEISS: And Mr. Selvaggi that was one year you requested.

MR. SELVAGGI: Yeah, one year.

MR. WEISS: One year extension, Mr. Mania?

MR. MANIA: One year with a one year extension.

MR. SELVAGGI: I think actually one day if Mr. and Mrs. Jallad....

MS. COFONI: Before we take a motion, is that, when did you...I don't remember the date that this expired. They got it on....

MR. SELVAGGI: The one year would actually...

MS. COFONI: Because it runs from when you expired.

MR. SELVAGGI: Yeah so it would be April, I think it was April 12th was the actual...April 12, 2012. It's in the letter.

MS. COFONI: And I have the actual....April 12, 201

MRS. NATAFALUSY: Then you need more than one year. That's going back to 2012. I mean, 2013.

MR. SELVAGGI: I think we actually had gotten one in between though. I believe.

MS. COFONI: I'm sorry. I don't have anything in my file. So it was April 12th.....I can't read my writing.

MR. BUCZYNSKI: 2012

MS. COFONI: It was 2012. Ok. So....

MR. BUCZYNSKI: You need a full year extension.

MS. COFONI: Well, it's good for one year so that goes to April 12, 2013. So you're....

MR. SELVAGGI: So amending it for I guess another year on top of that.

MR. WEISS: Three years.

MR. SELVAGGI: Three years.

MR. MANIA: You need two years.

MR. SELVAGGI: We had it till 2013 so 2014 would be one, 2015 would be two so we need a third.

MR. MANIA: Three years.

MR. WEISS: Ok, so would that comment, and Tiena we don't have a problem with granting a three year....no legal issue granting a three year extension?

MS. COFONI: No, nope.

MR. WEISS: John, I'm going to come back to you. We're going to modify that to a three year.

MR. MANIA: Three year extension.

MR. WEISS: Nelson, you second it?

MR. WEISS: Ok, so a three-year extension expiring on April 12, 2016. Correct?

MR. MANIA: Correct.

MR. WEISS: Ok. Any comments? Questions? Roll call.

Roll Call:

Joe Fleischner	- yes
Brian Schaechter	- yes
Henry Fastert	- yes
Nelson Russell	- yes
Howie Weiss	- yes

MR. SELVAGGI: Alright. Thank you guys. Have a good weekend.

MR. WEISS: Thank you everybody. Ok, we have one other extension request. PB 14-24, Luis Garzon extension of time to perfect a subdivision located at Block 3207, Lots 8.01 & 9 located at 1 & 7 Forest Road. Mr. Garzon, welcome back.

MR. GARZON: Good evening.

MR. WEISS: Obviously I just introduced the extension request. So, if you can, why don't you explain for the record why you're requesting the request? We need to swear Mr. Garzon in. So, if you would, before you speak we'll swear you in.

(MR. LUIS GARZON IS SWORN IN FOR THE RECORD)

MR. GARZON: Luis Garzon, G-A-R-Z-O-N. 16 Oak Street, Mount Olive, NJ

MS. COFONI: Thank you.

MR. WEISS: Ok so we have a copy of the letter, Mr. Garzon that you sent. You're obviously caught up in some red tape with the DEP and the Morris County Soil Conservation District.

MR. GARZON: Yes.

MR. WEISS: Not surprised. We've heard that before. Why don't you tell us what's happened.

MR. GARZON: Alright. So as part of the conditions of approval I needed to obtain the certificate from Morris County Soil Conservation which I did and I submitted to the department. And then DEP, the last word I heard from Susan, she had finalized her review. Her boss is....it's on her boss' table to review. I looked up the tracking on the website. They have five more days to give me a response...because it's 90 days. So, I'm hoping. She said within a week I can get a resolution and then I can move on to the next step which is....which I need to ask. Once I submit that as part of the resolution, you will finalize the resolution and then I can submit my...

MR. WEISS: No, no. What happens is the resolution is finalized. What's going to happen is if an extension is granted then we'll just continue with your approvals as you were given and then you'll continue with the permitting process working through probably....am I correct?

MRS. NATAFALUSY: Well I think he's just asking for an extension of time to perfect the subdivision.

MR. GARZON: Yes.

MRS. NATAFALUSY: He has 190 days and I think he doesn't feel he's going to be able to do that within the six month period from March so, he's asking for an extension of that time.

MR. WEISS: Right. And if an extension is granted he would simply just continue with the process going through your office, the engineer....

MS. COFONI: Any conditions that he would need to satisfy the resolution and then we can record.

MR. GARZON: Yes. Correct. So the only outstanding item would be the DEP approval and then I can submit the property...

MS. COFONI: Deeds.

MR. GARZON: The deeds to be able to get a sign and then I can submit it to the Town. So that's why I needed the extension...to accomplish those two items.

MR. WEISS: So let's put some dates on this. You have 190 days to perfect the subdivision.

MS. COFONI: From March.

MR. WEISS: From March which brings us to September, thereabouts. So we're looking for an extension of that...what's an appropriate time? Mr. Garzon, do you have a suggestion as to what kind of an extension you're requesting?

MR. GARZON: I was going to say, worst case scenario, we'll say four months but I'm hoping it's within months that I can get the approval.

MR. WEISS: There could be other issues that we're not aware of that's certainly out of your control. I would hate to have you come back. Not that I don't mind seeing you...I just don't think that we need to go through the process. I would think six months.

MR. MANIA: I would say a year.

MR. WEISS: Go a year from September?

MR. MANIA: Yup.

MR. WEISS: That's fine.

MRS. NATAFALUSY: From this September?

MS. COFONI: Ok, so he was approved....

MRS. NATAFALUSY: March 12, 2014

MR. WEISS: March 12th...180 days brings it to September 22. Ok. That's what we'll do.

MS COFONI: I'm sorry. I missed that.

MR. WEISS: We're going to go March of 2016. Giving him a one year....a six month extension....giving him a total of one year. Is that satisfactory for you? Do you think that's enough time?

MR. GARZON: I hope so, yes. DEP seems to be cooperating.

MR. WEISS: Well, you feel like you're close based on the tracking that you had. The DEP should be responding to you soon.

MR. GARZON: Yes.

MR. WEISS: Ok. Then that is the request from the applicant, to grant a six month extension through March, 2016 to perfect a subdivision. Does anybody have any questions? Seeing none then I'd like somebody to make a motion.

MR. RUSSELL: I'll move that PB 14-24 be approved.

MR. MANIA: I'll second it.

MR. WEISS: Of course, that was Nelson and then John. And of course the motion is to move that through March of 2016. March 12, 2016. Ok. Anybody have any questions, comments? Catherine, roll call.

Roll Call:

Joe Fleischner	- yes
Brian Schaechter	- yes
Henry Fastert	- yes
John Mania	- yes
Nelson Russell	- yes
Howie Weiss	- yes

MR. WEISS: Good luck with the process, Mr. Garzon.

MR. GARZON: Thank you very much.

MR. WEISS: Ok, we have a few developmental matters and I was just notified that we need to make a change in the agenda tonight. We are going to hear, the first one we're going to hear tonight because it's a settlement issue....

MS. COFONI: It's up to the Chair whether or not you want to move it but they've, Novaky has requested to be moved to the beginning because it is a settlement of litigation.

MR. WEISS: So therefore, we're going to hear PB 15-23, Todd Novaky, minor subdivision, at 4 32nd Street, Block 2603, Lots 1 & 4. Gentlemen, good evening.

MR. KARP: My name is Louis Karp with Weiner, Lesniak on behalf of the applicants.

MR. WEISS: I'm sorry, last name?

MR. KARP: Karp, K-A-R-P

MR. WEISS: Mr. Karp, welcome.

MR. KARP: Thank you very much.

MR. NOVAKY: I'm Todd Novaky. I am the litigant.

MR. KARP: The applicant.

MR. NOVAKY: The applicant. Sorry.

MR. WEISS: You're very positive, Mr. Novaky.

MR. NOVAKY: I've been through this for a while so....thirteen years (inaudible).

MR. WEISS: Ok, so, Mr. Karp, I'll turn it over to you. Your application, you'll explain what you want to do.

MR. KARP: Yes, our application tonight is for minor site plan approval for the property. This Board granted my subdivision approval in approximately 2002 and through some error on top of error on top of error the subdivision...the perfection of the subdivision was defective so in effect there is no subdivision. And we're just asking the Board to reapprove the subdivision that was approved in 2002. The 2002 map was prepared, it was signed by the Board and as I said it was not properly perfected. So, I'm just asking the Board to reapprove it. I have Mr. Novaky here. I have the engineer here if you want any testimony. That's basically what it is. The applicant's engineer can testify that he's inspected the site and there have been no changes to the site and to the area that was originally approved.

MR. WEISS: Ok, is that standard process that we follow? Is there any other thing that we might want to be aware of?

MR. BUCZYNSKI: I have a couple things to be aware of.

MR. WEISS: Ok.

MR. BUCZYNSKI: One is regarding the Highlands Approval that you received before. The lot that they have is constructed yet so as a condition, if and when that other lot is constructed they'll have to go back to Highlands for approval. I've discussed this with James Humphries from Highlands and that's what he said would have to be done. It won't hold up the perfection of the subdivision but it would be a condition that the (inaudible) aware that if that other lot is bought and (inaudible) they'll have to go to Highlands first.

MR. NOVAKY: Ok, but there's one thing...

MR. WEISS: Hold on we have to swear you in first.

MR. NOVAKY: You can swear me in.

(MR. TODD NOVAKY IS SWORN IN FOR THE RECORD)

MR. NOVAKY: Todd Novaky N-O-V-A-K-Y, 4 32nd Street, Budd Lake, NJ

MS. COFONI: Thank you.

MR. NOVAKY: The one mitigating factor I want to add in there so everybody's on the same page is in 2006 I sold the property believing the deed was correct. Sold the property, it was transferred. The imperfect deed wasn't uncovered till 2011 or 12.

MR. KARP: Eleven.

MR. NOVAKY: Eleven. So it's a more complex landscape than it would be if I still owned the property and we were just going straight at it. That's all I wanted to say. I just want to make sure we're on the same page.

MR. BUCZYNSKI: The owner of the other lot that would have to go back to the Highlands.

MR. NOVAKY: I think he actually has been going to Highlands but that's not my issue.

MR. KARP: Whatever the requirements of the state are we have to deal with those.

MS. COFONI: Highlands approval for development of...and which lot was that, Gene?

MR. BUCZYNSKI: I don't have the file with me.

MS. COFONI: I have it right here.

MR. BUCZYNSKI: Is it Lot 1? 1.01?

MR. NOVAKY: I don't remember.

MS. COFONI: I just want to make sure and be correct.

MR. BUCZYNSKI: Lot 4. The small lot. Lot 4. That the owner of Lot 4?

MS. COFONI: Anything else, Gene?

MR. BUCZYNSKI: That's the only thing I have.

MR. WEISS: Ok. I can't get anybody who has any questions of Mr. Novaky. Mr. Karp, did you have other questions? Do you have anything else for Mr. Novaky to present to us?

MR. KARP: No, I don't believe so.

MR. WEISS: So let me open to the public if anybody from the public has any questions for Mr. Novaky? I see none. So, Todd, thank you for that insight.

MR. NOVAKY: Thanks for hearing us.

MR. WEISS: Mr. Karp, I know you had said you brought up an engineer. I suppose it might be good for the record to testify as to the conditions as they exist today.

(MR. XXX IS SWORN IN FOR THE RECORD)

MR. GLOEDE: My name is George Gloede and my business is G. Gloede & Associates, PO Box 449, Oakridge, NJ 07438

MS. COFONI: Thank you.

MR. KARP: Could you please report your education and background?

MR. GLOEDE: Sure. I'm a graduate of New Jersey Institute of Technology. A licensed, professional engineer and planner with the state of New Jersey. I'm also a licensed, professional engineer in New York. I've testified before numerous boards throughout the state of New Jersey including this one. I've many, many times before.

MR. MANIA: I can attest to that, Mr. Chairman. Mr. Gloede has appeared many, many times.

MR. WEISS: We'll certainly accept Mr. Gloede as a professional engineer. Welcome back, Mr. Gloede.

MR. GLOEDE: Thank you.

MR. KARP: Mr. Gloede did you prepare the original site plan of my (inaudible) the plans?

MR. GLOEDE: Yes, I did.

MR. KARP: Have you inspected the site recently?

MR. GLOEDE: Yes, I did.

MR. KARP: Have there been any changes to the area since the plan?

MR. GLOEDE: No, everything is exactly the same. The trees were a little bit bigger. The shrubs are a little greener but that's about it since 12 years ago.

MR. KARP: If the Board would like, Mr. Gloede can go through the plan but it's the same.

MR. BUCZYNSKI: Since George got up, I'll ask a question.

MR. WEISS: Go ahead.

MR. BUCZYNSKI: George, regarding the letter interpretation, the LOI from before, that really was relative to what is Lot 1 in Mr. Novaky's (inaudible) Lot 4.

MR. GLOEDE: I'd have to go back and actually look through the (inaudible). I don't remember.

MR. BUCZYNSKI: Because it was a transition.

MR. GLOEDE: It was a transition.

MR. BUCZYNSKI: I believe that we covered within the limits of Lot 1. It didn't go on to what the new lot is, Lot 4.

MR. NOVAKY: Let's not get...there's one issue. The lot numbers changed (inaudible). The letter interpretation of the requestor for the new three-quarter acre lot which is the one I sold in 2006 which is the one the deed was imperfect on. So that's what I wanted to say. Originally the lot numbers were 1 and 1.01.

MR. BUCZYNSKI: Well if that's the case, if it was for that lot it's only in effect for five years. Again, that would be subject to the new owner.

MR. GLOEDE: Right. Exactly.

MR. BUCZYNSKI: So the same thing would be a letter interpretation.

MRS. NATAFALUSY: For the new lot.

MR. BUCZYNSKI: For the new lot.

MS. COFONI: Prior to the development.

MR. BUCZYNSKI: Prior to development.

MR. GLOEDE: Yes.

MR. WEISS: Is that the extent of your question, Gene?

MR. BUCZYNSKI: Yes it is.

MR. WEISS: Anybody have a question for Mr. Gloede? Is there anything else that we needed to do?

MS. COFONI: It's up to the Board. I know everyone has a plan so everyone knows what the subdivision is. It's up to the Board if anyone wants to hear testimony with regard to the basics of the subdivision and the division of the property and...

MR. WEISS: I think the testimony's pretty clear. There's been no change. No modifications. It's exactly what previously was presented and it was probably already drafted in the existing resolution.

MS. COFONI: Got cha.

MR. WEISS: I don't believe we need to hear that unless anyone has a difference of opinion. I think we're all in agreement to that so I don't believe we need to hear testimony. Ok. Mr. Karp, I don't the Planning Board has any other questions. Do you have anything else?

MR. KARP: No, I just would ask the Board to adopt a new resolution to subdivide the property as it did in the past and we'll go from there. We'll oversee the perfecting of the subdivision to make sure it's done correctly.

MR. WEISS: Ok....

MS. COFONI: Among new deeds to be signed and all that, right? Yeah.

MR. KARP: Yes, we're going to prepare a new subdivision deed. It's going to have to be signed by both owners. We'll submit it...

MRS. NATAFALUSY: Submit it to the Township (inaudible).

MS. COFONI: Yeah, to us.

MR. NOVAKY: I know how to do it. I've hired two guys. (Inaudible) Karp.

MR. WEISS: So let me at this point open it to the public. If anybody from the public has any questions about anything that we've heard tonight from Mr. Gloede or from the applicant. I see none from the audience. I'll close it to the audience. And at this point if there are any other comments or conversations. Somebody please make a motion.

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

MR. RUSSELL: I'll second it.

MR. WEISS: Hold on. Let's be clear. The motion is to draft a new resolution to approve the minor subdivision.

MR. MANIA: Everything you said Mr. Chairman.

MR. WEISS: Ok, because I've been making notes. So, John that's your motion and Nelson you seconded that? Any comments? Questions? Tiena, you're comfortable with what we've done?

MS. COFONI: That's fine.

MR. WEISS: Catherine, roll call.

Roll Call:

Joe Fleischner	- yes
Brian Schaechter	- yes
Henry Fastert	- yes
John Mania	- yes
Nelson Russell	- yes
Howie Weiss	- yes

MR. WEISS: That wasn't so late, Mr. Novaky, was it?

MR. NOVAKY: No it wasn't. Thank you much.

MR. WEISS: Nice to see you.

MR. MANIA: Good seeing you, George.

MR. WEISS: Ok, let's get right back on our schedule.

MRS. NATAFALUSY: The resolution will be adopted in August, ok?

MR. WEISS: Ok, getting right back on schedule we're going to move to our next developmental matter which is PB 15-15, Robert Katchen, Jr. variances for coverage and setback located at 176 Flanders Drakestown Road, Block 7100, Lot 55. Mr. Katchen. Mr. Katchen we do have a report. We have all the information that you submitted. We reviewed it. I believe we will start the process. You will explain to the Planning Board for the record why you're here and what you need but not before our attorney will swear you in. So if you would.

(MR. KATCHEN IS SWORN IN FOR THE RECORD)

MR. KATCHEN: Robert S. Katchen, Jr., K-A-T-C-H-E-N, 174 Flanders Drakestown Road, Flanders, NJ.

MS. COFONI: You said K-A-T-C-H-E-N?

MR. KATCHEN: E-N.

MS. COFONI: Oh, E-N. Sorry. Thank you.

MR. WEISS: Ok, so again we have the reports. For the record, and we are certainly sorry at the loss that you've sustained and we hope that we can help you get yourself going back in the right direction. So why don't you explain the situation that brings you here and what you're asking.

MR. KATCHEN: Basically, I own a property next door. It wasn't my loss but a friend of mine. Alls I want to do is rebuild the existing structures on building... on the lot.

MR. WEISS: Ok and when you build this is it going to be in the same footprint....in the same spot as ...

MR. KATCHEN: Yes, it is.

MR. WEISS: Ok. So Catherine, why don't we review what technically Mr. Katchen is here for for the record. There are certain variances required. I suppose that they were considered preexisting?

MRS. NATAFALUSY: Well the one question I had for Tiena was that is it a substandard lot since it is in the five acre zone and this is less than five acres? So would they need a variance for a substandard lot to rebuild the house as well?

MR. FLEISCHNER: But he's going rebuild the house on top of the part of the house that's still there. So is it that part of the house grandfathered?

MRS. NATAFALUSY: That's why I'm asking the attorney.

MR. FLEISCHNER: Oh, ok. I wasn't sure how you...

MRS. NATAFALUSY: Because more than fifty percent of the house is gone. It's down to the foundation so that's why...

MR. FLEISCHNER: Yeah but that was a bi-level.

MR. KATCHEN: Correct.

MR. FLEISCHNER: So that's not...it's a foundation but it's also fifty percent of the house...even though the garage is still in it. That's why I asked that question. Because if an insurance company looked at it, they include, I live in a bi-level, they count that as part of the house.

MRS. NATAFALUSY: Ok.

MR. FLEISCHNER: I'm just...I know what you're saying and I don't think it's an issue but it's just...

MRS. NATAFALUSY: The other variance is a side yard setback. The deck that they are putting on top of the back of the house encroaches in the side yard setback so....

MR. KATCHEN: There was an existing deck there.

MRS. NATAFALUSY: Excuse me?

MR. KATCHEN: There was an existing deck there.

MRS. NATAFALUSY: It's gone. (Inaudible) so you need a variance.

MR. KATCHEN: Ok.

MRS. NATAFALUSY: Ok. The other variance is side yard setback for an accessory structure. He wants to demolish the barn and then recreate it on the same footprint which is only approximately five feet from the side yard setback. In that zone district you're supposed to be one and a half times the height of the structure and...

MR. WEISS: Ok. So I guess what we're going to need to do is we're going to talk about those specific variances. We're going to identify...go ahead.

MS. COFONI: I think that we should consider that he needs a lot area variance as well. Because this, what's the difference between these two, Catherine? What's the left and the right?

MR. FLEISCHNER: The left is the house.

MRS. NATAFALUSY: The left is the house....the remnants of the house. The right is the barn that he wants to demolish.

MS. COFONI: Ok, so this is the barn.

MRS. NATAFALUSY: Right. So we're talking about this. So, you're keeping that bottom part of the house or you're tearing it down and putting it back up?

MR. KATCHEN: The house itself?

MS. COFONI: Yeah.

MR. KATCHEN: Take it from the foundation. Bring it up to today's codes.

MS. COFONI: Take it down to the foundation? I think we should consider a lot area.

MR. WEISS: Let's just be sure when you say take it down to the foundation, you're going to demolish what's still there today?

MS. COFONI: Yeah and take it down to like....

MR. KATCHEN: Yes.

MR. WEISS: We're looking at a photograph of a garage.

MRS. NATAFALUSY: So then it definitely is....

MR. KATCHEN: I'm going to start off the foundation on both of them.

MR. WEISS: I'm sorry?

MR. KATCHEN: I'm going to start off the foundation on both of them.

MS. COFONI: He needs lot area.

MR. FLEISCHNER: You're leaving the existing foundation

MR. KATCHEN: I'm not touching the foundations on either of them.

MRS. NATAFALUSY: Yeah but what the question is because in the photographs here, there is garage doors. Are you taking that first level down?

MR. KATCHEN: The wood structure, yes.

MR. WEISS: No we're looking at the house.

MRS. NATAFALUSY: The house.

MR. KATCHEN: Right. The house. The wood structure.

MR. SCHAECHTER: The bi-level of a foundation is actually, those two windows are part of the foundation.

MR. KATCHEN: The bi-level foundation is going to stay. What you see in the drawing, that wood's going to come down to the foundation.

MR. SCHAECHTER: So the white wood is going. Whatever is...

MR. KATCHEN: Yes, correct.

MRS. NATAFALUSY: He's demolishing.

MR. WEISS: No.

MR. FLEISCHER: No. No, he's not. No, he's not. That is the foundation.

MR. SCHAECHTER: The garage is the foundation.

MS, COFONI: The picture that you have on your plans, if you can open them up. The picture on the front page.

MR. WEISS: The photograph.

MS. COFONI: The one on the left.

MR. WEISS: Bottom left.

MS. COFONI: Are you taking down any of that picture? Any of what we see, is that going to be removed?

MR. KATCHEN: Yes, I'm taking the top deck off.

MR. WEISS: Ok.

MS. COFONI: Ok. So the garage doors....that whole height will still remain?

MR. KATCHEN: Well, they're going to become new.

MS. COFONI: But I mean that part of the structure will stay?

MR. KATCHEN: Basically what's going to happen. It's got 8 foot ceilings in it now. When we replace the upper deck, we're going to raise up to 9 foot ceilings in the basement.

MS. COFONI: The structure's been almost completely demolished. I think he needs a lot area variance.

MR. FLEISCHNER: No big deal.

MS. COFONI: So we'll stick with the three that Catherine has on her report.

MS. NATAFALUSY: Ok. Thank you.

MR. WEISS: Yeah for the record Dan Nelsen just arrived. Ok, so we're adding substandard lot area as another variance?

MS. COFONI: Yeah. Catherine already had it on her report.

MR. WEISS: Ok. Let's talk about something that may be a little bit easier for you to digest. Let's go to the barn. For the barn, you need a side yard setback variance as Catherine noted. An accessory structure needs to be one and a half times the height from the property line and...

MR. KATCHEN: There's no way that can happen.

MR. WEISS: Tell us why.

MR. KATCHEN: It's five foot off my existing property.

MS. COFONI: If you were to rebuild where...

MR. KATCHEN: I am rebuilding off the existing foundation again. The barn. I've been looking at that barn for 15 years but the barn's rotted out. So I'm rebuilding off the existing foundation. The existing foundation is approximately 5 ½ off my property line where I live now.

MR. WEISS: The question is, is there any other place you can put it?

MR. KATCHEN: The barn?

MR. WEISS: Yeah.

MR. KATCHEN: Without going through Highlands and....no.

MR. WEISS: I don't know if Highlands is applicable here.

MR. KATCHEN: The lot is I believe, 100 foot wide. There's really nothing you can do with it. Maybe it's 150 foot wide.

MR. BUCZYNSKI: Maybe 158 feet wide.

MR. KATCHEN: Yeah.

MR. WEISS: Because that's one of the things the Planning Board is trying to do is try to minimize those waivers. So we just kind of have to examine. We have to have a conversation. I'm looking at the map. The survey of the property. To me it looks like it could easily be moved. How tall is the barn?

MS. COFONI: How tall will it be?

MR. WEISS: How tall will it be? Right.

MR. FASTERT: Just curiosity. These are both existing uses. Why does he need variances to repair an existing use?

MS. COFONI: Because they have almost been completely demolished. And once you almost completely demolish...

MR. FASTERT: By fire.

MS. COFONI: What?

MR. FASTERT: By fire.

MS. COFONI: Yeah.

MRS. NATAFALUSY: Henry, the barn was not destroyed by fire.

MR. FASTERT: I don't understand why that wouldn't be an existing use. He's repairing. The structure was destroyed by an act of God.

MS. COFONI: Because if you are...if your structure is non-compliant in some way...setback, height, whatever it may be...and you don't have a variance to permit that. If it's destroyed you don't get to rebuild it in the space that it is unless you get a variance.

MR. SCHAECHTER: But the barn was never destroyed. It's just in disrepair.

MRS. NATAFALUSY: He's destroying it and bringing it (inaudible).

MS. COFONI: He's getting rid of it.

MR. KATCHEN: I could leave one wall up.

MRS. NATAFALUSY: More than fifty percent. Non-conforming structures can continue to exist but if they...if you take them down you can't put them back up without a variance.

MR. FLEISCHNER: Can you turn it sideways?

MR. KATCHEN: The whole purpose, I want to build off the existing foundation.

MR. FASTERT: I guess I don't understand if you take it voluntarily but in the case of the house, the house was...

MR. WEISS: We're not talking about the house right now.

MR. FASTERT: I understand that Howie.

MS. COFONI: The law is the same.

MR. FASTERT: Really?

MS. COFONI: Yes. And that's why when people decide not to get variances for the location of certain structures on their property that are non-conforming. We say, if you don't get a variance, that means if it's destroyed you can't rebuild it in that location.

MR. FASTERT: What if it was conforming when it was originally built and became non-conforming because of changes?

MS. COFONI: If it's destroyed, you have to get a variance to rebuild in that location.

MR. FASTERT: That's interesting.

MR. WEISS: So, what we need to do is kind of use a little bit...

MRS. NATAFALUSY: We do have a section in the ordinance that allows us to apply the standards that were in effect when a subdivision was created. And then, but this did not fall under that either.

MR. FASTERT: Ok.

MR. WEISS: So, I hear you loud and clear. Your answer is logical. You want to use the existing foundation. That's nice that you want that. It makes sense but from our Land Use perspective we have to come up with various proofs that would give you the ability to give us the ability to grant you a variance. So, you said to me roughly, the barn is 20 feet high that would require this barn to be 30 feet off of the property line.

MR. KATCHEN: Right.

MR. WEISS: So if this planning board was to ask you to build that barn 30 feet from the property line. Where would that put the barn?

MR. KATCHEN: If I relocate it then I'll have to go in front of Highlands.

MR. WEISS: I don't know if that's accurate. I don't know if that's true.

MR. BUCZYNSKI: Why would you have to go in front of Highlands?

MR. KATCHEN: I have Turkey Brook in the back yard. So I fall within 200 foot setback, 250 foot setback for any structure.

MR. WEISS: I don't believe that....that's not a Highlands approval.

MS. COFONI: DEP is he talking about?

MR. BUCZYNSKI: It's 160 feet from the brook right now. So if you put a new location you're saying is you have to be 300 feet?

MR. KATCHEN: Yeah, you can't do it.

MR. BUCZYNSKI: Can't do it.

MS. COFONI: Ok. So that...

MR. WEISS: That's the kind of testimony....so you have...the condition of the property....I don't want to call it (inaudible). You have a brook that runs on your property that prohibits you from putting the barn in a position that would satisfy the ordinance.

MR. KATCHEN: Correct.

MR. WEISS: Therefore, you're asking for the variance based on that...rather than because you want to use the foundation?

MR. KATCHEN: Correct.

MR. WEISS: Perfect. That's a good answer. So it sounds like there's a hardship.

MR. KATCHEN: Correct.

MR. MANIA: I would say so.

MR. WEISS: Ok. I would agree. Mr. Katchen doesn't really have an option to put the barn anywhere from where it exists now. And therefore, I would say that is positive criteria that it was proven that that variance request has been met. Tiena do you agree?

MS. COFONI: Yes.

MR. WEISS: Ok. Let's talk about some negative criteria and negative criteria is by building that barn where we kind of agreeing based on what you just testified to would there be any negative detriment. Would it impact the neighbors? Would it have any kind of negative detriment to the area?

MR. KATCHEN: Improvement to the house I currently because it's an eyesore right now.

MR. WEISS: Ok, so modernizing or rebuilding this barn would certainly not cause any substantial detriment to the public good?

MR. KATCHEN: Correct.

MR. WEISS: And your testimony is that a new barn would certainly be more appealing to the neighborhood?

MR. KATCHEN: Without a doubt.

MR. WEISS: Perhaps even be a value to the neighborhood.

MR. KATCHEN: Gives value to the neighborhood.

MR. WEISS: So by us granting a variance and your negative criteria proof certainly, I have no problem with that testimony. I don't see anybody from the Planning Board arguing with that testimony. And therefore, I would say that the proofs have been met on the negative and positive criteria as it relates to the side yard setback as it deals with the barn. So I believe we can kind of move on past that issue. We have another issue which is the side yard setback on the principal structure and I suppose that pertains to the deck? So we're going to go through the same exact process. You're putting a deck where we see it on the plan and by doing so you're encroaching on the side yard setback. So let's talk about why is it there and why can't it be somewhere else?

MR. KATCHEN: There was an existing deck on the house that fit the same footprint and there's really no other place you can put it.

MR. WEISS: Ok, so let's build on the second part of what you said to me because the first part doesn't apply because the old house is gone and we're not dealing with a footprint of a foundation. That is your desire and your need to build a house on the existing foundation. It's not even a question. But now we're talking about a deck. So what was once there is not there anymore and you're starting fresh. So, tell me again, the second part of what you said because I don't really want to hear the first part.

MS. COFONI: The side yard setback? Is that what we're talking about here?

MR. WEISS: Yeah.

MS. COFONI: What is the required side yard setback...for the deck?

MRS. NATAFALUSY: Fifty feet.

MR. WEISS: Right here. Side yard is fifty feet.

MS. COFONI: So if you put the...for example, what if you put the deck on this side of the house on the?

MS. WEISS: What Tiena is pointing to is if you were to move the deck closer to the driveway portion of the house, what would be wrong with that?

MR. KATCHEN: That's where the master bedroom is.

MR. WEISS: And you want the deck off of the...

MR. KATCHEN: (Inaudible) the bi-level come out of the dining room.

MR. WEISS: Ok, so you're basically telling us that there's a hardship because of the fact that you're using the existing foundation if you were to move the deck anywhere else it would not really be a useful deck.

MR. KATCHEN: Correct.

MR. WEISS: It would be a deck off of a bedroom and you (inaudible) build the deck off the living room, family room for the purpose of what decks are intended for.

MR. KATCHEN: Correct.

MR. WEISS: And we certainly don't want to incur...your hardships...you're testifying that there is condition of the property, namely that being that there's a foundation there that was destroyed by fire and you're not going to move that foundation and building the deck, putting the deck there is the most sensible place. Anywhere else doesn't make sense so you're kind of....you have a hardship. Is that correct? Would you agree that?

MR. KATCHEN: I would agree with that.

MR. MANIA: No argument here.

MRS. NATAFALUSY: Did you say you own the lot next door?

MR. KATCHEN: Excuse me?

MRS. NATAFALUSY: Do you own the lot next door?

MR. KATCHEN: Yes.

MR. WEISS: Fifty six or fifty four? Which lot is yours?

MR. KATCHEN: 174...the one where the barn encroaches on.

MR. WEISS: Got you. That's 56.

MR. BUCZYNSKI: Fifty six, yeah.

MR. WEISS: Ok. So, I do believe that Mr. Katchen just did testify to the positive criteria and that based on the condition of the property. I wouldn't call it slope or topography but maybe an exceptional condition.

MS. COFONI: Whoa, whoa, whoa. You said accessing....meeting the side yard setback for the deck would be pushing it onto the other side of the house and that wouldn't work because it would be off the master bedroom. But there is no master bedroom here.

MRS. NATAFALUSY: Right.

MS. COFONI: You're creating all this.

MR. KATCHEN: Yes.

MS. COFONI: But that's how your plans would be. Ok.

MR. KATCHEN: Basically putting back the way it was.

MS. COFONI: Ok. This is up to the Board but...

MR. WEISS: I got to tell you that I think according to what we have....to me it sounds like it's an exceptional situation that's unique to this piece of property. No?

MS. COFONI: I think that's for you guys.

MR. WEISS: Would the Planning Board agree with me that this is an exceptional situation?

MR. SCHAECHTER: Yes.

MR. FASTERT: Yes.

MR. WEISS: That would prove the positive criteria. I believe. Am I correct?

MR. MANIA: Mr. Katchen, do you own that property now or are you buying it?

MR. KATCHEN: I bought it last August.

MR. MANIA: You bought it.

MR. KATCHEN: Yes.

MRS. NATAFALUSY: After the fire.

MR. WEISS: Let me ask you another question before we come to... What would happen with your plans if you were to move the master bedroom to back of the house and your family room to the front of the house....kind of flipping your plans over and therefore, taking the deck and moving it towards the driveway? Kind of reversing your plan.

MR. KATCHEN: I just don't know if I've ever seen a bi-level set up like that.

MR. FLEISCHNER: Because the deck is going to be off the dining room.

MR. WEISS: Right.

MR. FLEISCHNER: The living room faces the front.

MR. WEISS: Without specifying which room (inaudible) dining room. And so is it possible to put the dining room in the front of the house by the driveway?

MS. COFONI: I know but he's creating all that. So my point is and this is up to the Board....my point is is that in order to meet the side yard setback on the deck, Gene just placed it out, he could swap the deck to the other side in the same location. Push it back towards the driveway and then if that doesn't...

MR. BUCZYNSKI: It would be a smaller deck by four feet.

MS. COFONI: It would be a slightly smaller deck.

MR. SCHAECHTER: Except for one thing....in a bi-level you walk up because the garage is already there and you walk up the steps in (inaudible). You can't just flip a bi-level around and put the kitchen above what would be the garage.

MS. COFONI: Ok, that's my question.

MR. SCHAECHTER: Yeah you wouldn't do that in a bi-level. You're walking up your steps into your bedroom instead of into (inaudible) space and stuff like that that way.

MS. COFONI: Ok.

MR. WEISS: Ok so we're going to go back and this is an exceptional situation unique to this particular property based on the fire and your desires to rebuild it as it was. I will repeat and say that that has satisfied the positive criteria and so I'll ask another question. By putting the deck where you proposed do you see any kind of substantial detriment to the neighborhood?

MR. KATCHEN: I see it as an improvement.

MR. WEISS: No detriment to the public good and it won't impair our zone plan and ordinances?

MR. KATCHEN: No.

MR. WEISS: Ok, so the testimony says that by Mr. Katchen is that the deck will enhance the area. Certainly will compliment the house. I don't have a problem with that testimony.

MR. MANIA: And remove an eyesore.

MR. WEISS: When it comes to the deck there is no deck so... I don't have a problem accepting that testimony as negative criteria. Which leaves us...in case of anybody from the Planning Board has any concerns about that...leaves us to address the substantial lot area and I'm not really sure how we can best address that. I'm sorry?

MS. COFONI: The issue is complicated by the fact that the applicant owns the adjacent property. Is your adjacent property, what size?

MR. KATCHEN: It's a substandard lot also.

MS. COFONI: It's a substandard lot also?

MR. KATCHEN: (Inaudible) road five acre zoning. Not five acres.

MS. COFONI: Right.

MR. FLEISCHNER: It was done after the fact.

MR. WEISS: And they were preexisting. I'm not sure.

MR. FLEISCHNER: The town kept changing things after everybody lived there.

MR. WEISS: I think you could look at it saying that there's no real addition here. There was once a house and there was once a barn. Obviously there still is a barn. And at the end of this project there's going to be a house and there's going to be a barn. It's not like you're putting in a couple more buildings or swimming pools or anything to that effect. I don't know if that helps but I think that if this is a preexisting non-conforming situation is that correct?

MS. COFONI: With regard to lot area?

MR. WEISS: Yeah. And even if he was to redraw the property line it doesn't really help. Correct?

MRS. NATAFALUSY: Well, if he merged the two lots.

MR. BUCZYNSKI: If he merged two lots it would just be less non-conforming but his lot would still be non-conforming.

MS. COFONI: We're talking merging the two lots?

MRS. NATAFALUSY: One larger non-conforming lot.

MR. SCHAECHTER: With two houses.

MS. COFONI: It still wouldn't be conforming?

MR. BUCZYNSKI: Wouldn't be two houses. He wouldn't be able build his house.

MR. FLEISCHNER: Two owners.

MR. WEISS: No matter what we do there's going to be two substandard lots. So a little less substandard...it's like being a little less pregnant I think. You know. You still have the situation. I don't really have a problem. What is on Lot 56? Is it vacant right now?

MR. NELSEN: It's his house.

MR. FLEISCHNER: It's his house. He lives there.

MR. WEISS: I understand. I just don't see the house on the plan that I'm looking at. That's all. Ok so it's not like there's future development coming here. I think when you add them both up there's still not five acres together. It's just slightly over two. So we can slice it and dice it all we want. It's not going to change.

MR. FLEISCHNER: So we issue a variance for substandard...

MR. WEISS: But we need to make those proofs, correct? Ok. So...

MR. FLEISCHNER: The proof is you can't make it something it's not.

MR. WEISS: I think that's...I just want to put it into context. There's again, it's a unique situation and the property is preexisting, substandard no matter what you do it's always going to be substandard.

MR. FASTERT: And the fact that the house was burned down. Is that also an issue for non-conforming lot in terms of lot size?

MR. WEISS: It goes back to if they're...

MR. FASTERT: So preexisting doesn't count there either? Is that correct?

MS. COFONI: I don't think I understand the question. Say again?

MR. FASTERT: This home was a preexisting home that he wants to rebuild. The lot size is undersized when the house was built before the zoning changed. Why isn't this a preexisting use?

MS. COFONI: Again, because the....

MR. FASTERT: Because it burnt?

MR. FLEISCHNER: The footprint is still the same.

MR. MANIA: That's the key. Don't burn your house down.

MR. WEISS: So negative criteria for granting the variance do we.... We need some testimony to that, don't we?

MRS. NATAFALUSY: I don't think the question would be (inaudible) if he didn't own the adjoining lot. That's what brought the questions.

MR. WEISS: Ok. By granting a variance, Mr. Katchen to the substandard lot. You know we don't have an expanded tax map. Based on your best knowledge, tell me about the other homes, the other properties in the area. Are they all similar in size?

MR. KATCHEN: All the properties in the area, the largest property is the one next door to this which is three and a half, four acres. Other than that, most of the properties are an acre (inaudible) an acre.

MR. WEISS: So they're relatively close in size?

MR. KATCHEN: Yes.

MR. WEISS: Ok, so...

MRS. NATAFALUSY: There's a 15 acre parcel behind him. Twenty four acres on the other side.

MR. SCHAECHTER: Can he testify on other people's lot since he's not an expert on?

MRS. NATAFALUSY: I'm not saying that.

MR. SCHAECHTER: No, I'm just saying. He's testifying to other people's lots. I don't see any maps here.

MR. WEISS: Right so he's testifying and I think we're trying to come up with some testimony that shows by granting this won't have any negative impact on the community which would solve the negative criteria dilemma. I phrased the question to the best of his ability can he tell me about the lots.

MR. SCHAECHTER: That's more like it.

MR. WEISS: And I think that's how I phrased the question and apparently all the other lots are about the same size. Granting such a...if we were to grant such a variance for the substandard lot, would you feel that it would have a negative impact on the neighborhood?

MR. KATCHEN: No, I do not.

MR. WEISS: It will not cause any substantial detriment to the public good?

MR. KATCHEN: Not at all.

MR. WEISS: Ok. Testimony has been given which satisfies the negative criteria. I think it's an unfortunate situation and at the end of the day we're going to be left with what we started with. Sometimes it takes a little bit longer to get the record straight. I don't have any further questions. Does anybody from the Planning Board have any questions? Gene do you have any concerns?

MR. BUCZYNSKI: No.

MR. WEISS: Tiena, can I ask you if it's ok, what we've done?

MS. COFONI: I have no concerns.

MR. WEISS: Ok. Then therefore, let me open it to the public. If anybody from the public has any questions for Mr. Katchen, based on the testimony that was delivered tonight, I see none. We'll close it to the public. And Catherine, I will ask for a motion...

MR. FLEISCHNER: I move to approve PB 15-15, Robert Katchen, Jr. with the appropriate variances, for coverages and setbacks.

MR. MANIA: I'll second it.

MR. WEISS: Ok. Joe, John, thank you very much. Any questions? Comments? Seeing none. Catherine, roll call.

Roll Call:

Joe Fleischner	- yes
Brian Schaechter	- yes
Henry Fastert	- yes
John Mania	- yes
Nelson Russell	- yes
Howie Weiss	- yes

MR. WEISS: Good luck.

MR. KATCHEN: Thank you.

MR. WEISS: Next month we'll have a resolution drafted for you.

MR. KATCHEN: Do I need to show up for that?

MR. WEISS: You don't have to. (Inaudible) the Planning Office after that second meeting in August. Ok. Next application PB 15-16. Mr. Lam. Variance. A request for an encroachment in the rear yard setback at 12 Salmon Court. Block 7702, Lot 16.21. Welcome back Mr. Lam. I knew I would see you again based on your previous comments to us so we obviously have been through.....I kind of knew where this was going but it's nice that I know. Obviously what we'll do is we'll swear you in and of course you'll make like we don't know what's going on and you'll state the for the record you'll state why you're here.

(MR. LAM IS SWORN IN FOR THE RECORD)

MR. LAM: Yau-Ting Lam, L-A-M, 12 Salmon Court, Budd Lake, NJ

MR. WEISS: Thank you Mr. Lam. We have a copy of the report. We've seen some photographs.

MS. COFONI: Is she going to be testifying as well? I can swear her in.

(MRS. LAM IS SWORN IN FOR THE RECORD)

MRS. LAM: Ria Lam, 12 Salmon Court, Budd Lake, NJ

MR. WEISS: Ok, so Mr. Lam, I've started to say we have seen photographs. We are familiar with the neighborhood so why don't you tell us what brings you here today.

MR. LAM: I'm asking the Board to allow me to do a deck....to approve a variance in the back of my lot. Basically just do a deck. You can see on the pictures I have no access to my backyard from my dining room. The sliding door goes to a staircase down there. I'm just asking for permission.

MR. WEISS: Ok, so. Tell us for the record how deep is your backyard? What is the depth from the...

MR LAM: I have a 35 foot setback. If you look at the picture my fence is at 24 feet to be exact.

MR. WEISS: What's at 24 feet?

MR. LAM: My back of the fence. I have a metal fence.

MR. WEISS: Post and rail fence.

MR. LAM: In the picture. Metal fence. That's 24 feet.

MR. WEISS: Twenty four feet from where? The back of the house?

MR. LAM: From the back of the house and I have another 11 feet into the slope of my backyard.

MR. BUCZYNSKI: There's a retaining wall back there.

MR. LAM: Retaining wall.

MR. WEISS: And when you add the two together that's 35 feet?

MR. LAM: Exactly.

MR. WEISS: And so essentially the standard here in this zone, Catherine is 35 foot rear yard setback?

MRS. NATAFALUSY: Yes.

MR. WEISS: So essentially, based on the property there is no allowance for anything because your edge of your home is at the edge of the building envelope.

MRS. NATAFALUSY: They built the house to the building envelope.

MR. WEISS: Correct. That seems to be very common in this neighborhood.

MS. COFONI: Can I ask a question?

MR. WEISS: Go right ahead.

MS. COFONI: The picture shows...what the picture shows is not what you're proposing, right? You're proposing an actual...oh yeah, it's

MR. LAM: Existing (inaudible).

MS. COFONI: That's the staircase, right? Ok. So you're looking to have a 16 foot rear yard setback where 35 feet is required and that's due to the construction of a deck measuring 20'x30'.

MRS. NATAFALUSY: Just for the record, building coverage will be at 19 percent if the deck is approved and maximum is 20 percent. So basically, nothing else can be done on this property without a variance if this is approved.

MR. WEISS: Ok, you're aware of that?

MR. LAM: Yes.

MR. WEISS: Ok. Any other....I switched pages... Catherine is there anything else on the property that we need to be aware of...on your review?

MRS. NATAFALUSY: No, I don't think so. Just this is within the subdivision known as Lakeview Estates and it was a cluster development so the lots are 10,000 square foot. This lot is actually about 13,000 square foot.

MR. WEISS: Ok. So, again, you're testifying to us that the topography and the condition of your property gives you zero leeway to put anything. The back of your home is built on the edge of the building envelope. I couldn't even sit here and ask you to move it. No matter where you move it, there's no room.

MS. COFONI: What about what's behind him?

MR. LAM: That's another house behind.

MS. COFONI: I just can't see how they access it. I guess it's just not on that plan.

MR. LAM: My house is actually elevated on the slope. I don't think...

MRS. NATAFALUSY: Can I ask you a question? Is there a reason why you want to build a deck so big?

MR. LAM: Actually I go by design of my contractor. That's the design I send to the Board. I need the 30 foot wide are because if you look in my back yard my roof top is a little slanted. That's a lot of ice buildup. Every winter I have to go up there, climb through the window and break the ice. So in order for me to be safer I actually want to have a landing which is the deck. I can bring my ladder there and I can go off of there and stop going through the window from my bathroom window to break down the ice. So I really want...unless you want to see me in the newspaper one day.

MR. SCHAECHTER: That doesn't sound like the best procedure.

MR. LAM: I will try not to and my wife told me "Be careful".

MR. WEISS: Ok, let's talk about the neighborhood. I know obviously you were here for another application. Tell us in your subdivision, are there other homes, certainly homes on Salmon Court that have decks?

MR. LAM: Absolutely. Unless you use another contractor to design the deck and he came up with a plan. At this point, I just stick with the plan. I'm not really a designer but I just go by what he gave me at this point. And that will give me enough space for...I have four kids plus myself. I'm picturing myself one day I can go out the sliding door and have breakfast looking out. I really want (inaudible) sit down and have lunch.

MR. WEISS: You're lot 16.21. When I'm looking at the map to the right, 16.22, 16.20 on the left. Do those homes have decks?

MR. LAM: Yes. One has existing deck. That's the new model home on my left. On my right side they just approved for a deck. It is the process of (inaudible).

MR. WEISS: 16.22

MRS. NATAFALUSY: The variance that was granted.

MR. WEISS: There are homes that abut your home...Lot 16.29, 16.28, 16.27 for example. They're directly behind you. Tell us about those homes.

MR. LAM: Those homes have either a patio or a deck.

MR. WEISS: Do you know which one has a deck?

MR. LAM: The one right by...directly behind.

MR. WEISS: 16.28

MR. LAM: And the one to my right side. I think I have a picture of that deck.

MR. SCHAECHTER: Are those decks approximately the same size?

MR. LAM: I think the one down stairs looks bigger. Just a little bit bigger.

MS. COFONI: Yeah, it's hard to say but...

MR. LAM: And then on Page 4, the view from the back fence as you walk to the right...that's a deck. A picture of two decks behind me.

MRS. NATAFALUSY: This is the one behind you?

MR. LAM: That's the one behind me.

MRS. NATAFALUSY: And this is the model home?

MR. LAM: That's the model home.

MS. COFONI: Am I right in saying that in order to comply with rear yard setback, he couldn't do the deck at all, right?

MRS. NATAFALUSY: Exactly. A patio but not a deck.

MS. COFONI: Right.

MR. WEISS: I just have to question the existing staircase and little deck that's off. What room is that off your home?

MR. LAM: That is actually off my dining room.

MR. WEISS: And that's where the deck is going to come off your house?

MR. LAM: That's my kitchen. The kitchen with a sliding door with a little dinette.

MR. WEISS: You almost have to question if you look at the photographs if that's already encroaching? That was put up by the builder I take it.

MR. LAM: Yes.

MR. FASTERT: Oh, the little staircase?

MR. WILPERT: Yeah.

MR. FASTERT: I'm sure it is.

MR. WEISS: So again, I think that based on what you just testified, Mr. Lam, the rest of the neighborhood already has decks put on. Would you say that if we granted a variance it wouldn't have any substantial detriment to the public good?

MR. LAM: I wouldn't think so because I actually want to enhance the neighborhood. At this point, if you drive up from Johnson Avenue you look directly at my house and you see that old staircase. That's not something anybody would want to look at. I do notice that my neighbor wants me to improve the neighborhood too. He's looking at my back yard all the time and he wasn't too happy about some of the stuff that I have at this point but I do have plans in the future to make it better. I will talk to him about it but at this point I just want to have the deck (inaudible).

MR. WEISS: Does anybody from the Planning Board have any questions for Mr. Lam? I certainly think that comments that were made, request for the variance has been proved....both positive and negative. Gene? Gene do you have any questions?

MR. BUCZYNSKI: No, you're fine.

MR. WEISS: Mrs. Lam did you have any questions or comments?

MRS. LAM: No. Thank you.

MR. WEISS: Ok, so let me open it to the public. If anybody from the public has any questions for Mr. and Mrs. Lam based on the testimony given tonight... Sir if you would you can come up to the podium and state your name and address for the record.

MR. MOHAPATRA: I am Rajdeep Mohapatra and my last name is M-O-H-A-P-A-T-R-A. I am just from the right hand side of him. 10 Salmon Court, Budd Lake, NJ.

MR. WEISS: Ok, sir.

MR. MOHAPATRA: I think you know my deck approval in the last of couple of sessions it got approved so I do not have any problem with he building a deck as well. So I truly believe it will enhance the property value in the neighborhood.

MR. WEISS: That's good to know. Thank you. Anybody else from the public? Sir? If you would state your name.

MR. CHAN: My name is Kenneth Chan. Last name C-H-A-N. I reside at 23 McKelvie Street, Budd Lake, NJ. I am the neighbor that's right below Mr. Lam's back yard. And my question is why does this deck need to be so big? I do have a presentation I want to bring up to you guys. I didn't have enough copy for everybody. I have seven copies here.

MR. WEISS: Why don't you tell us before you present it? Tell us what you have for us.

MR. CHAN: I have some background information here and I did a survey of similar deck on Salmon Court and they're much smaller in size. The dimension that I actually from the Planning Department and there's issues with the impact of the deck of that large size right behind my back yard.

MR. WEISS: Ok, so what we'll do Mr. Chan; let's swear you in if would.

(MR. KENNETH CHAN IS SWORN IN FOR THE RECORD)

MR. WEISS: You have a presentation. Why don't you present that to...

MS. COFONI: Why don't we....can I just take a look at your presentation for a second? I think what I'm going to tell you is that you should testify to those things as opposed to just handing them out. We need oral testimony so I just want to....

MR. CHAN: I'll go over them.

MS. COFONI: Ok, this is what you're actually going to say? Ok. Alright. That's fine. Why don't we mark this O-1?

MR. WEISS: Ok. We'll share one.

MS. COFONI: Can you just explain to me just so we have the record clear, I understand you said 23 McKelvie Street but do you know your lot number? Are you 16.28?

MR. CHAN: Yes, that's me.

MS. COFONI: Ok. And also just because I'm curious, the pictures that the applicant...do you have a deck on your house?

MR. CHAN: Yes, I originally built it.

MS. COFONI: Submitted with the application are some pictures and I just wondered if you could tell me if one of the pictures is actually your property that we're looking at here? Just to kind of orient ourselves. And I'm looking at...there's three pictures on the page...two on the left and one on the right. Is that your house right there?

MR. CHAN: Yeah, that's my house and that's my house.

MS. COFONI: Ok...so that's your house. Ok.

MR. CHAN: Both of these pictures are my house.

MS. COFONI: Two different angles.

MR. CHAN: Yeah. One at this angle.....that my family room, my master bedroom here and this is my kitchen, this is my bathroom.

MS. COFONI: Ok and can you tell me the dimensions of your deck that you have?

MR. CHAN: 11'x20'.

MS. COFONI: 11'x20'.

MR. CHAN: You want me to give you a few minutes before I start or just go ahead?

MR. WEISS: No, you can go ahead. Tell us what is it that you have?

MR. CHAN: Ok, well, you know, like I said, my name is Kenneth Chan. I live at Budd Lake at 23 McKelvie for ten years and I raised three of my kids there. And we enjoy the neighborhood and peaceful setting and (inaudible) environment. When I built my house, I work with the builder. All the house that are built in the community were so like (inaudible) home. There were a couple spec home and I know which one exactly because I was there in the beginning. And the houses that we built are all customized. So I work within the boundary. I know that I want to build deck and I planned everything ahead so I have....I built my deck within 35 setback. Ok. My property and the neighbor's. And I also did a survey. If you go on Page 3 on Salmon Court, 2 Salmon Court, and the one that recently got approved, 10 Salmon Court. Both of the decks are much smaller than the 20'x30' that being built. That's on Page 3. What I'm doing is I'm requesting that you deny the variance for 12 Salmon Court because it negatively impacts my dwelling at 23 McKelvie and I believe the hardship of the applicant is his own fault. Other people have built the deck within the codes and the reason I disagree with the deck is that it's too close to my back yard. It's so big. And I think the deck will have a lot of people on 20x30. I have asked Mr. Lam to build smaller. He just ignored me and walked away. I think that this deck's going to be a huge eyesore. The guy doesn't even take care of his back yard and I have pictures. You can look at the pictures in the appendix. There's weeds, there's (inaudible). Things are protruding into my back yard. I don't know how this deck will be maintained. With a deck this big somebody might be throwing things from the deck into my back yard. And I also have an issue (inaudible). The problem I have is when it rains my back yard, my driveway gets flooded. That's because there's not enough proper drainage put in already. So, through my findings, I went back, I actually calculated the requirement for the building coverage. They are 19 percent; however, for the lot that they're on the surface coverage, if they put the deck up they'll exceed the 30 percent. And the calculation I have is in back on Page 17. I just took the survey that I got and the building, I took the 130 by 106. It come up to be 13,884 square foot. And I broke the building, if you look at the picture, there's the green boxes, what they are and the red is for the proposing to build. What they're proposing to build is 600 square foot deck. Without the deck, it's about 14.55 percent which is what the other person said earlier. So with the proposed deck is 18.87, close to 19 what the other person said earlier. I took a look at the parking spaces. I took in two rectangular. One I call the front and one I call the rear. I add them up, if you look at the red I calculate there be 31.4 so they exceeded the surface coverage and I think that's the reason why I have so much water going to my back yard because that parking space is causing problem. So I don't know what the deck's going to do but if you put a deck that big on there it's going to alter the water even worse.

MR. WEISS: Now, Mr. Chan, when you make that comment, are you an engineer or is that just an opinion?

MR. CHAN: I'm an engineer.

MR. WEISS: Ok, so, you're telling me that a deck...

MR. SCHAECHTER: What kind of engineer?

MR. CHAN: Electrical.

MR. WEISS: Thank you for clarifying that. I'm confused when a deck. We don't consider a deck impervious coverage. And therefore, there's no increase to impervious coverage.

MR. CHAN: There won't be?

MR. WEISS: In my tenure on this Planning Board, I don't ever remember decks adding to impervious coverage or having any kind of increase in flow...

MR. FASTERT: Aren't decks impervious coverage now?

MR. WEISS: They're not.

MR. SCHAECHTER: In fact, if he was to build a patio that would be a bigger problem.

MR. BUCZYNSKI: Water still goes through that area.

MRS. NATAFALUSY: That would be impervious coverage.

MR. WEISS: We're trying to stay with you but you have to understand, you're testifying to things that doesn't really hold ground here with the Planning Board.

MR. CHAN: Ok, if I'm wrong, I'm wrong. You just pointed out to me. That's fine.

MR. WEISS: I want to try to come up with...so you're calling the deck impervious coverage. I think that the Planning Board and certainly the recommendation that or the testimony that we have, the information that we have is that the impervious coverage is closer to 20 percent. It's 19 percent. I think that we...

MRS. NATAFALUSY: I'm sorry Mr. Chairman; the building coverage is 19 percent. The lot coverage, 30 percent is permitted. My calculations have it at 24 percent because we don't include the deck. It would be the house, the walkway, the driveway...

MR. WEISS: Ok, so still he falls under on both and that's...

MR. CHAN: Ok, so I'm under. Ok that's fine. I just point it out because I don't know what caused all the water come from coming down from the hill. So I just...

MR. WEISS: I don't know if that's an issue before as I certainly have compassion for the water problem but I don't know that this is...anything that this applicant is presenting that would make it worse or he's certainly not presenting anything that would fix it.

MR. CHAN: Ok.

MR. WEISS: So it's not...certainly you have the right to suggest it but we don't have the ability to put any kind of request of this applicant to change that before he builds a deck. So...

MR. CHAN: Well, ok. The next page goes in the hardship. I say like this house is customized by the applicant himself and I was at the Planning, I was here this morning. I first found out that they could have modify the...move the house a little bit to the front with a variance. So that's one of the things so forget about the coverage part...that doesn't apply then cross the bullets out. So the other thing is, I said the applicant could have chosen a smaller building to fit the future planning of the deck.

MR. WEISS: I can't disagree with you. I can't agree with you. I can simply say that your point is well taken except regardless of the size home that he built, the applicant certainly has the right to come and request a variance. Perhaps if he built a smaller home, he wouldn't need it. I don't know if I agree. I don't think he's got...how big is your deck? It's 20 by?

MR. LAM: 30 by 20 (inaudible) so we will be less than 600 square feet. The reason why I did 20 is because...

MR. WEISS: How far out off the house at the max?

MR. LAM: (Inaudible).

MR. WEISS: So I don't believe he probably couldn't move his house 20 feet to the road. Might have been able to go ten feet and I don't know...

MR. CHAN: Well I'm not saying to the road but he could definitely do five according to the person I spoke to this morning.

MRS. NATAFALUSY: I'm sorry I don't see that. I don't know why somebody would have told you that because it looks like the front of the house sits right at the front yard setback....according to the survey.

MR. CHAN: He could have had a variance and plan it ahead of time.

MR. WEISS: Well what happens when a subdivision is built, I know that the Township and I could be wrong kind of likes uniformity from the curb. And I think when these subdivisions are developed we try to make a uniform front yard setback that all the houses conform to...that way you don't have one house on the road and one house off it. I think that's the beauty of some of the subdivisions is that every house is approximately I'm going to say 25 feet from the road. And so with that in mind I believe when the developer came and I can't say I remember that was probably the direction...that all the homes were going to be equal from the front. And every piece of property is different as we all know and I know that you had said that you took...you did your due diligence and you planned your house with the ability to build a deck but perhaps your lot size is different and I haven't studied your property but unfortunately the Planning Board can't really take into account what you did and judge Mr. Lam. That wouldn't be proper for this Planning Board.

MR. CHAN: Well I'm not saying that right now. Everything was under his control when he built the house himself.

MR. LAM: (Inaudible) pick the style (inaudible). I picked the interior design...

MR. SCHAECHTER: But the house was built.

MR. LAM: The house was (inaudible). The style.

MR. CHAN: You could pick the model of the house you know so you could have the deck planned...

MR. WEISS: And at the end of the day Mr. Lam certainly has the opportunity to pick the home that he wanted and like I said earlier, he also has the right to come in and request a variance at this point.

MR. CHAN: Ok.

MR. WEISS: And so you're making a lot of points and I'm sure that they're all valid. I'm looking at your Page 11 and you're talking about the weeds and the maintenance of the property. The Township certainly has property maintenance ordinances. This Planning Board is not the authority to report that to but if you feel the property is not maintained you have proper recourse. I'm seeing a picture and I would say that's unacceptable but it's certainly not the...this Planning Board is not the Board to bring that up.

MR. CHAN: Ok.

MR. MANIA: He certainly has the right to come to the Town Council and request some relief.

MR. WEISS: I don't think you need to go that far.

MRS. NATAFALUSY: He can talk to the Zoning Officer.

MR. WEISS: Go right to the Zoning Officer and your neighbor has an obligation to...

MR. LAM: May I add to this (inaudible). I do have plans as I said that would enhance the area. We talked to Kenneth regarding to that and all he focus on is how ugly it is and how my house is built so far back to the property. However, the property that he's looking at... the retaining wall is my property. The trees that he planted on is on my property also when he planted. I didn't say a word of it because I think it's a good idea to have some separation between our two areas. I would, I still have ten feet down. I have five more feet down to Kenneth's lot at this point. I would think my retaining wall...all those trees or wildflowers that is between the retaining wall would actually protrude underneath the retaining wall and onto his grass.

MR. WEISS: I don't want to be rude, whether it is or not, not the issue of this Planning Board. I hear you. It's an issue for somebody other than this Planning Board.

MR. LAM: Absolutely. Sorry.

MR. WEISS: And so you can take it up with...you can litigate it. You can certainly go to the Zoning Officer. Mr. Chan you can try to work it out over a cup of coffee. It's just not here in the Planning Board.

MR. LAM: Ok. Thank you.

MR. CHAN: Ok. No problem. Well on Page 7 I saying this is approximate view from where the deck is going to be. I think a deck this size is going to be privacy encroachment. That's all I'm bringing up ok on Page 7. And the other thing is, I don't know what they're building there and it's that big. Page 9 is a view from my family room, my master bath. I have to look at it. That's all I'm bringing up. Page 10 is an ariel view that I have so everybody see what it looks like from a little taller. The other one is just a bunch of weeds that's there. I do have people cutting grass....my son or other people doing it. I don't want them to get hurt but that's not the place to bring it up. And that's it, ok? I think the deck is very big and everybody else is doing smaller ones. I don't know why....

MR. WEISS: Let me ask you a question. Again the deck is 20 by

MR. MANIA: Twenty by thirty.

MR. WEISS: Let me write that down so I don't have to ask again. Twenty by thirty. And clearly you're saying you think that's too big. What size deck do you think would be more appropriate?

MR. CHAN: I think uniform like everybody else have. Everybody's got 12 as the depth so that's why I did a survey on Page 3 what the decks look like in the neighborhood. And I got these numbers this morning.

MR. LAM: The model home is actually at 15 at this point. The depth. If you look at (inaudible) and I want to emphasize that my fence, my metal fence is at 24 feet. It's actually within the fence. I'm not encroaching him. I'm not trying to (inaudible). I'm just trying to go within my means and within the fence.

MR. WEISS: I could try to best explain the situation. Mr. Lam by building this deck does not exceed any kind of building coverage, lot coverage. So he has the right. The Planning Board doesn't have the authority to sit here and tell him to build something different. It's either yes or no based on what the applicant is suggesting.

MR. CHAN: I've never dealt with a Planning Board. This is my first time here.

MR. WEISS: I'm trying to explain that I personally think some of your concerns are 100 percent accurate. I don't believe I have the authority to sit here and tell Mr. Lam he can't build that deck because I don't want it to be 30 feet. Now if his 30 foot deck exceeds the lot coverage, then it gives us the right to tell Mr. Lam that he can't build a deck of that size. But Mr. Lam is....no?

MRS. NATAFALUSY: Well he's asking for a variance. He is asking for a variance.

MS. COFONI: So he's asking for a variance.

MR. FASTERT: A setback

MR. WEISS: I understand, of a setback.

MRS. NATAFALUSY: Right but the Board can say to him...

MR. WEISS: Ok, so maybe I didn't explain myself properly.

MR. BUCZYNSKI: You could say the Board wanted (inaudible) 30 by 12 instead of 30 by 20.

MR. WEISS: But it wouldn't change the fact that he would still need a variance.

MS. COFONI: But it would be less of a variance.

MRS. NATAFALUSY: But it would be less of a variance.

MR. WEISS: I don't like that word, less of a variance.

MRS. NATAFALUSY: Less encroachment.

MR. FLEISCHNER: Less encroaching.

MRS. NATAFALUSY: Into the rear yard setback.

MR. CHAN: Yeah that's the point. That's what I'm trying to get to too.

MR. FASTERT: Question...probably for Catherine. In looking at the back of the Chan's house, the existing staircase and little deck or platform, whatever you want to call that, is attached to an alcove that's part of the house. Is the alcove itself outside of the building envelope?

MRS. NATAFALUSY: That's what it looks like. I mean if the setback line is right there...

MR. FASTERT: At the foundation.

MRS. NATAFALUSY: That's what it looks like.

MR. NELSEN: Gene, I have a question. Do you know the difference in elevations with these houses?

MR. BUCZYNSKI: Both of their homes?

MR. NELSEN: Yeah.

MR. BUCZYNSKI: I think I could get some idea. It's got to be, I would say over ten feet.

MR. NELSEN: Ten feet difference in that...

MR. BUCZYNSKI: Talking about difference in elevations.

MR. LAM: From which one?

MR. BUCZYNSKI: Your house, say your foundation, to his house.

MR. LAM: From my foundation to his house?

MR. CHAN: I think it's more than ten feet.

MR. LAM: More than ten feet. At least 20 feet. It's very steep. It's very steep. I give you an estimate.

MR. NELSEN: Is, I'm sorry I just don't have it in my head, is Salmon. McKlevie

MR. CHAN: McKelvie Street.

MR. NELSEN: McKelvie and Salmon. Is Salmon south of McKlevie or north of McKlevie?

MRS. NATAFALUSY: South.

MR. CHAN: I think it's south.

MR. WEISS: It's up the hill. It's south.

MR. NELSEN: Salmon is south. Ok. I'm just wondering with that height difference with this deck just be kind of looking down on this gentlemen's property?

MR. CHAN: It is looking down.

MR. FLEISCHNER: But no matter what you do it's going to look down. Doesn't matter.

MR. NELSEN: Right but the fact that the deck....well it does matter. The fact that the deck is going to come out 20 feet.

MR. SCHAECHTER: Part of his landscaping or improvements could be 20 or 30 feet of arborvitaes. That would (inaudible).

MR. NELSEN: Right but this is going to be a deck overlooking this gentlemen's property.

MR. SCHAECHTER: No matter what he puts there it's going to be overlooking.

MR. MANIA: More bigger doesn't matter.

MR. NELSEN: If he puts anything there.

MR. SCHAECHTER: He's already got a platform that overlooks the property. His bedroom window overlooks the property. You can't change where the house is.

MR. NELSEN: Yeah but if you bring the deck out 20 feet further from the house...

MR. SCHAECHTER: It's still going to overlook his property.

MR. NELSEN: But from a different perspective.

MR. FLEISCHNER: Mr. Lam I have a question. Otherwise we can go round with this. Would you have a problem if, now other decks are 12 feet away, you're looking for 20 feet away. If we kind of split the difference and we said 16 by 30 instead of 20 by 30, we take four feet off the 20. It's not as close. Otherwise we're going to argue apples and oranges and I'm kind of looking for maybe, you're going to need a variance. There are other houses this Board has approved other decks and if you're willing to do that...

MR. LAM: We can do that but it really depends on my contractor....how he make that curve. I try to make the curve (inaudible).

MR. SCHAECHTER: What do you need the curve for?

MR. LAM: It looks nice. It looks so much nicer.

MR. FLEISCHNER: Yeah but you know what, when you're sitting up there having breakfast maybe a straight line is a little better than a curve. I just throw that out as kind of maybe a compromise so we can move forward.

MR. SCHAECHTER: Without that curve you might have the same area of the deck. The general area without taking the curve, the angles off you're going to add it in...

MR. WEISS: Might be cheaper to build too.

MR. FLEISCHNER: Yeah, yeah.

MR. RUSSELL: Sixteen is also standard lumber.

MR. FLEISCHNER: Nelson's absolutely correct. Sixteen foot is standard lumber. You can ask your contractor. I'm not paying you that. I'm paying you less.

MS. COFONI: So, the question is, because I didn't hear a clear answer, are you willing to modify your application to construct a deck measuring 16 by 30 or do you want to continue your application measuring 20 by 30?

MR. LAM: That's fine. That's fine.

MS. COFONI: You'll modify your application?

MR. LAM: I'll modify my application.

MS. COFONI: You'll modify your application to be 16 by 20?

MR. LAM: I'll modify my application. Absolutely.

MR. WEISS: Sixteen by thirty.

MS. COFONI: Oh so sorry. Sixteen by thirty.

MR. FLEISCHNER: Sixteen by thirty.

MR. WEISS: Ok I suppose....go ahead Mr. Lam.

MR. LAM: Just to let you know that...I have a new picture here that shows that I have two trees that's blocking Kenneth dining room and his bedroom. I don't really see any of his...

MR. WEISS: I don't think that's a....the question is more for Mr. Chan to tell us about what his view his, not your view. And that's ok. With all due respect. So Mr. Chan I think in the world of planning, I think you have to see that there's give and take.

MR. CHAN: Yeah, I understand.

MR. WEISS: And I think that's as much of a concession we're going to be able to get.

MR. CHAN: I understand. So you saying that Mr. Lam's agreed to do have a reduced deck 16 by 30 and he's going to put the proper landscaping on. Is that one of the requirements?

MR. FLEISCHNER: We can't do landscape.

MR. WEISS: I don't think we can force Mr. Lam to landscape.

MRS. NATAFALUSY: He said he was going to landscape.

MR. CHAN: Cause now he can sit and sipping coffee looking through my bathroom you know.

MR. LAM: What do you think I am? A peeping?

MR. CHAN: I don't know. You could be...

MR. WEISS: I would like to see that perhaps the two of you could take it out of the Planning Board and work out some kind of plan.

MR. CHAN: Ok.

MR. FASTERT: Howie, in the past we've required buffer planting. But generally it's a developer. Is that...

MR. BUCZYNSKI: Not residents to resident.

MR. FASTERT: Not resident to resident....even as part of a variance?

MR. WEISS: We don't have the authority to request Mr. Lam...

MR. FASTERT: As part of a variance...if we could require a buffer planting?

MR. WEISS: Apparently not.

MR. SCHAECHTER: I'm sure Mr. Lam doesn't want to look at his property just like he doesn't want to look at Mr. Lam's property.

MRS. LAM: We don't. And to be honest with you, we didn't landscape in the back. We landscaped in the front to beautify our home. We didn't do the back because we do intend on making renovations and we didn't want to landscape and have the renovations just pretty much (inaudible).

MR. WEISS: So we hope over the next period of time there will be some landscaping and it will all be better and it will become a tolerable situation.

MR. SCHAECHTER: Everybody gets along.

MR. WEISS: Mr. Chan did you have anything else you wanted us to hear?

MR. CHAN: No.

MR. WEISS: Ok, I don't know if it's exactly what you're looking for but I think that your testimony was helpful and maybe mitigating some of the problem that was there.

MR. CHAN: Ok.

MR. WEISS: So I thank you for that. Does anybody on the Planning Board have any questions for Mr. Chan? Does anybody else from the public have anything? I think that we made the proofs on the positive and the negative side. Mr. Lam you have any other questions? Comments? Anybody have anything for Mr. Lam?

MR. LAM: Do I have to resubmit the revision?

MRS. NATAFALUSY: What we can do is just...if the Board approves this they'd have to get a zoning permit and the zoning permit would have the new dimension sizes of the...

MR. LAM: But the variance would be 16 by 30?

MRS. NATAFALUSY: Yes.

MS. COFONI: Yes.

MR. WEISS: The approval will say 16 by 30. Somebody on the Planning Board like to make a motion?

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

MR. FLEISCHNER: I'll second it.

MR. MANIA: I move for approval of PB 15-16, Mr. Lam with a variance.

MRS. NATAFALUSY: With the amended size of the deck.

MR. MANIA: The amended. Right.

MR. FLEISCHNER: I'll second it.

MR. WEISS: Thank you John. Thank you Joe. Any questions? Seeing none. Catherine, roll call.

Roll Call:

Joe Fleischner	- yes
Brian Schaechter	- yes
Henry Fastert	- yes
John Mania	- yes
Dan Nelsen	- yes
Nelson Russell	- yes
Howie Weiss	- yes

MR. WEISS: Good luck, gentlemen. Good luck to both of you. We have one last application on the agenda. PB 15-17, Debeck Associates, coming in for an amended preliminary, I'm sorry, an amended preliminary and final site plan, 358 Route 46, 364 Route 46, Block 8200, Lots 5 and 6. Let's take a five minute break. It's 8:35. We'll come back at 8:40. Ok, I have introduced the applicant and tonight we have Mr. Stein. Welcome back, Mr. Stein.

MR. STEIN: Thank you very much.

MR. WEISS: Why don't you tell us about your application tonight?

MR. STEIN: Thank you, Mr. Chairman. For the record, Richard Stein. I'm an attorney with Laddey, Clark & Ryan in Sparta, New Jersey. We're representing Debeck Associates tonight. First I have to offer an apology. This Board approved an excellent site plan for this property five years ago and after some reverse engineering by DEP we are here to get something not quite as good but what we're stuck with. Back in 2009, the applicant applied to this Board for site plan approval for the development of Block 8200, Lot 5 for an automobile dealership. The Board granted site plan approval for that particular property. After that we intended to apply to DEP for a hardship to allow the property to be developed. Because it's an isolated lot there is nothing else we can do in the Highlands with this particular property. We went to the Highlands Council. They recommended instead of trying that route to go the redevelopment route. Sat down and explained the process to us...how it would work with us to go through that. Sounded like a good idea. We petitioned Mount Olive to petition the Highlands Council for a redevelopment designation for our property because the redevelopment area encompassed more than just our property. Mount Olive was kind enough to so petition. We went to the Highlands Council. The Highlands Council reviewed our project and the site plan and approved a redevelopment designation for the property. Redevelopment designation allows the DEP to waive all the strict bulk requirements, the three percent impervious coverage that the Highlands ordinarily imposes on a property. We went down for our preapplication meeting with the DEP, the Highlands representative came with us, presented the plan to DEP. Fine make your application. We made the application. It went through staff review. It was approved right along. It got right down to the person we needed to sign the permit and he said no. It doesn't adequately protect Highlands resources which were a, I'll call it patch of trees that were located on the northerly side of the property. It required us to...we had a choice at that point to either appeal that decision directly to the appellate division and wait two years and then have the appellate division say we defer to the agency's expertise or redesign the plan. We redesigned the plan and moved everything in a southerly direction towards Route 46 and because of the need to move the property in that direction we had a brief review with staff and we had to come back to the Planning Board to get an amended final site plan approval for this particular property. The application before you tonight has a couple of different changes from what you approved back in 2010. The impervious surface is less. The parking area is less. The setback to the residential properties to the rear is greater and all of the variances that we required back in 2009-10 are required again. What I'd like to do, I'm going to hand out copies of the resolution that the Board approved. Mr. Chairman, I'm also going to hand out from our application in 2009, the matrix listing the variances and design waivers.

MS. COFONI: Why don't we mark that one? We'll mark that Exhibit A-1. And this is the zoning table from the...

MR. STEIN: The 2009 application.

MR. WEISS: Thank you. The matrix of requested variances from 2009.

MR. STEIN: If the Board would take a look at the matrix from 2009 and the matrix from our current application, they are identical except in the current application we added one more variance which related to the tree removal ordinance that we hadn't put in our prior applications made (inaudible). Otherwise, they're identical. I'd actually given some consideration just from a philosophical, legal standpoint as to whether we had to apply for the same variances and waivers all over again but then decided it would just be easier if I did it and so we're reapplying for the same variances and waivers that we applied for in 2009. I handed out the resolution. In the resolution itself in Paragraphs 9, 10 and 11, this is where the Board addressed and granted the variances that we required in our prior application and in Paragraphs 13 and 14 the Board addressed and granted the design waivers that we required in our prior application. I'm doing this hopefully to move this along just a bit.

MS. COFONI: Can I ask a question, Mr. Stein? So, none of the variances even the specifics of the variance, I just took a quick look, are affected by the changes that you made? So they're not even...because you said impervious surface...

MR. STEIN: The variances that we... are the same variance exceptions. They're identical except for the walls. The walls are taller now than they were back in 2009 by about I think up to five feet in a few locations.

MR. BUCZYNSKI: It affects the DEP.

MS. COFONI: Oh, ok. So what is the height of the walls now?

MR. STEIN: The highest point on the wall right now I believe is 24 feet. In our prior application, I believe it was 19 feet.

MS. COFONI: Ok.

MR. STEIN: Anything over six feet requires a variance under your ordinance.

MR. BUCZYNSKI: I think you terraced them before.

MR. STEIN: Mr. Buczynski's absolutely right. We were able to do some terracing on the prior application. We cannot do it on this application because of the relocation of the parking.

MR. BUCZYNSKI: Too bad we can't make it difficult so you go back to DEP tell them we don't like this.

MR. STEIN: I don't think Mr. Lasser would let me get out of this building alive if we had to do that.

MS. COFONI: So none of the other, none of the other calculations of the variances have been modified?

MR. STEIN: They have not. Basically, what DEP did was we had... A car dealership today needs inventory. People come in to a dealership, they pick out a car, that's the one they buy and they take it home that day. There were 90 parking spaces at the rear of the property where a lot of the inventory will be stored. Because of the push-forward by DEP, we're down to I think 16 parking spaces, excuse me 18 in the back of the property so we had to take 72 parking spaces and try to make them up in other places on the property. We couldn't make all of them up. We made a lot of them up which is why the, the property, I call it sort of squished. Everything just got squished down a little bit from the way it was before.

MR. FASTERT: Question for Gene. Gene, if they're going to build a 24 foot wall do we have ordinance to cover walls of that height?

MR. BUCZYNSKI: Well we have the ordinance about terracing. They really can't terrace so they're going to have to provide design calculations. That was in my report. They'll have to provide design calculations for the wall.

MR. FASTERT: Ok, so we don't have any standards around that. They're just going to have to submit something to you?

MR. BUCZYNSKI: No, right.

MR. FASTERT: That was my question...if we had any standards for anything like that.

MR. STEIN: With that explanation Mr. Chairman, if there are no other questions about procedurally why we're here tonight, I could have Mr. Manilio sworn in then and I can have him very briefly run through the site plan again.

MR. WEISS: Let's do that.

(MR. JOHN MANILIO IS SWORN IN FOR THE RECORD)

MR. MANILIO: John Manilio, M-A-N-I-L-I-O and business address is PO Box 160, Westfield, New Jersey 07090.

MR. STEIN: Mr. Manilio have you ever testified before this Board before?

MR. MANILIO: No, I have not.

MR. STEIN: Would you please give the Board your education and your credentials and licensing.

MR. MANILIO: Sure. I have a Bachelor of Science degree in Civil Engineering from Syracuse University. I've been practicing engineering in the state for roughly 12 years...both on the municipal side and private side. I've testified in front of numerous boards throughout the state, including Morris County, Randolph, Chatham, East Hanover, Hanover, and Washington Township. I'm a licensed professional engineer in the state of New Jersey.

MR. WEISS: Mr. Manilio do you have anything to do with the initial application?

MR. MANILIO: I (inaudible).

MR. WEISS: So you didn't...did you have participation?

MR. MANILIO: I actually prepared those.

MR. WEISS: But you didn't testify at the time?

MR. MANILIO: I did not testify.

MR. WEISS: Somebody else from your firm?

MR. MANILIO: Yes, the president of the company testified.

MR. WEISS: Ok, I don't have any questions for Mr. Manilio. Seeing none, we'll accept Mr. Manilio as a...

MR. STEIN: Thank you Mr. Chairman. Mr. Manilio I'm just going to let you briefly give a narrative explanation to the Planning Board exactly what we're trying to do here tonight.

MR. MANILIO: So that's a large exhibit. I have a smaller 11x17 so it's easier to see.

MS. COFONI: Ok, so A-2.

MR. WEISS: Mark that A-2. Can you explain to us what A-2 is?

MR. MANILIO: A-2 is a package of four exhibits with various names (inaudible).

MS. COFONI: Why don't we mark them individually because they're not related? So, the first that ariel plan.

MR. MANILIO: (inaudible).

MS. COFONI: Yes, please.

MR. WEISS: And then when we go to, if you go to the next one, we'll identify that one as you go to it. So right now we'll stay with A-2 which is the ariel plan.

MRS. NATAFALUSY: Is there a date on here? 7/18?

MR. MANILIO: Today's date 7/16.

MRS. NATAFALUSY: 7/16.

MR. MANILIO: The first exhibit I'm going to use is A-2. It's entitled Debeck Associates, LLC, Ariel Plan, prepared by Redcom Design & Construction with a date of July 16, 2015. It's an ariel exhibit showing the vicinity of the property. As Mr. Stein testified the property's are known as Block 8200, Lots 5 & 6. Lot 6 is Subaru 46. Lot 5 is the vacant lot that the proposed development is proposed on. It's located on Route 46. It's surrounded by commercial properties to the west, the east and the south. And with residential properties to the north. The next is A-3 it's entitled Debeck Associates, LLC Site Plan, Sheet 3, dated June 22, 2009. Last revised March 18, 2010 and this is what was previously approved by the Board in the 2009 application. Authorized in 2010. It was a 17,100 square foot two story automotive dealership. With 204 parking spaces. Mr. Stein had testified there were 90 parking spaces along the rear. When I show you the revised or amended site plans, I'll show you how that changed. Access to Lot 5 was going to be a common shared access off of Lot 6 off of Route 46. There's going to be a connection along the north side to connect the two properties together. A-4?

MRS. NATAFALUSY: A-4

MR. MANILIO: (Inaudible) entitled Debeck Associates, LLC Site Plan Rendering dated July 16, 2015 so on the east side is the darker shaded property. That's the proposed development as you see; for the most part this site has not changed. We have reduced the amount of parking in the rear so we went from 90 parking spaces behind the building to actually (inaudible) parking spaces in the far I guess northwest

corner of the property and then the only other change to the building was the service drive through that was located towards the front or middle portion of the building...got pushed back to the rear portion of building. There's minor modifications to the parking along the front to make up for some of the parking that was lost in the back. So we reduced the parking from 204 to 150 additionally the impervious coverage dropped from 80,514 square feet to 69,915 square feet. It reduced the impervious by 10,600 square feet for the amended site plan. Additionally, it moved further away from the residential properties to the north. The original application had parking roughly 55 to 65 feet from the property line. This application has parking 70 feet, (inaudible) parking spaces (inaudible) up to 155 feet closer to the residential (inaudible).

MR. WEISS: Tell me that again. How far is the parking from the closest home?

MR. MANILIO: From the lot line to the closest residential on this side there is approximately 70

MR. WEISS: Seventy feet, ok.

MR. MANILIO: And on this side to the east side of the property it's about 155 feet.

MR. FASTERT: To the property line?

MR. SCHAECHTER: To the property line not the house?

MR. MANILIO: Right.

MR. WEISS: Tell me again, what was it? Do you remember what it was?

MS. COFONI: Was it 56.3 and now it's 70 feet?

MR. MANILIO: Originally it varied from 55 feet on the west to 65 feet.

MS. COFONI: Fifty five feet to seventy feet essentially now is the closest.

MR. WEISS: Sixty five

MS. COFONI: Oh, 65.

MR. WEISS: So it's a major reduction. Ok.

MR. MANILIO: Mr. Stein testified or stated that the reason for that was to save the existing forested area that was on the north portion of the property. So this dark green represents what are existing wooded areas on the property. So that's all will remain and we're filling in the areas with additional trees as required by the DEP and as required by the Tree Replacement Ordinance. So the other change that to the site was the retaining walls. We had terraced walls before that totaled up to approximately 19 feet. The walls now are approximately 25 feet or a little less than 25 feet. Another requirement from the DEP was to, instead of having terraced walls was to have one wall to reduce the non-disturbance. (Inaudible) including that wooded area. And we'll have those designed structurally and (inaudible) testing as well on the soil prior to the construction of those walls. So landscaping (inaudible) previously was the (inaudible) of an acre (inaudible) disturbed over an acre of wooded area. (Inaudible) requires replacement of trees, shrubs and (inaudible). At that point we had provided 72 trees, 80 whips and then shrubs as well. With this application we're proposing to cut down 37 trees. For the most part that's just the bottom area here to get enough access around the building for fire safety and for circulation. To remove 37 trees, 168 replacement trees are required by Town ordinance. We're proposing 75 (inaudible) those trees along the side, the rear and the area back there (inaudible).

MR. MANIA: So what's not put it goes into the Tree Bank, right?

MS. COFONI: I too was wondering, I apologize, could you tell me those numbers again for the tree? You're removing how many trees?

MR. MANILIO: Thirty seven.

MS. COFONI: Thirty seven trees and that's the 10 inches or larger, right?

MR. MANILIO: Yes.

MS. COFONI: Ok, 37 removed and you're planting how many?

MR. MANILIO: Seventy five.

MS. COFONI: Seventy five planted and how many would be required?

MR. MANILIO: One sixty eight.

MS. COFONI: One sixty eight required. And I'm just....

MR. MANILIO: So we're actually planting more, I guess nursery stock trees than was previously applied to improve and we'll maintain the existing forested area on the property as well.

MS. COFONI: That's what I'm trying to look at because originally you were going to remove 95 trees and replacement required is 398. That's what I have.

MR. MANILIO: I believe the Town ordinance had if you disturbed more than an acre of trees or forested areas there was a different calculation for replacement. Now that we're reducing the amount of tree disturbance...

MS. COFONI: Oh, so your replacement numbers change.

MR. MANILIO: Yes.

MS. COFONI: Oh, ok. That I understand. Ok. At the prior planting total of 72...ok so were you in the previous plan going to plant 398 trees?

MR. MANILIO: No, it was 72 trees, 80 whips, and (inaudible) number of shrubs.

MS. COFONI: So you would need a waiver from that?

MR. STEIN: We do.

MR. MANIA: So there's no requirement for the Tree Bank is that what we're saying?

MR. WEISS: Catherine, do you know?

MRS. NATAFALUSY: I think they're asking for a waiver.

MS. COFONI: They're asking for a waiver.

MR. BUCZYNSKI: What happened last approval though?

MS. COFONI: That's what I'm not...

MR. BUCZYNSKI: Because in the resolution it says the applicant agreed to (inaudible) ordinance requirements.

MS. COFONI: Right. So that's why I was thinking you guys were planting 398 trees.

MR. BUCZYNSKI: Or you were going to put money in Tree Bank before?

MS. COFONI: Yes, that's what it was. Because that's what the ordinance says, right. If you're not planting all on site then you put in the Tree Bank.

MR. MANIA: Right. Exactly.

MR. STEIN: We'll have to ...I think that's how the resolution was read but I think when we went back the ordinance for if you disturb more than an acre of trees was a combination of whips, trees and shrubs which we complied with.

MS. COFONI: Oh.

MR. BUCZYNSKI: Before?

MR. MANILIO: Yeah, yeah, compliance the first time. Yes.

MR. BUCZYNSKI: Why wouldn't we...

MRS. NATAFALUSY: Why wouldn't we...

MR. BUCZYNSKI: Why wouldn't it be in the resolution then?

MS. COFONI: So...

MR. MANILIO: This time we're disturbing less land and we're cutting down less trees. We have a different calculation of what we need to replace. But we still need a variance from the ordinance...

MR. WEISS: A waiver.

MR. MANIA: A waiver.

MR. MANILIO: A waiver, excuse me.

MR. STEIN: We're planting more full-sized trees 3 inches or above. Last time it was 72. Now we're planting 75.

MS. COFONI: And the reason you need a waiver is because you're also not planning on putting any in the Tree Bank?

MR. STEIN: That's what we're requesting.

MS. COFONI: Ok.

MR. MANIA: I'm not so sure I like that.

MR. SCHAECHTER: What's the cost of the tree in the Tree Bank?

MR. BUCZYNSKI: A lot of times we look at \$200 per tree at the time so you're talking about what, \$18,600, something in that neighborhood.

MR. MANILIO: And as far as other changes, there are minor changes to the lighting.

MR. BUCZYNSKI: I don't think we're done with that yet. Don't move too fast.

MS. COFONI: So what's the number? We're talking about 92 you're short.

MR. BUCZYNSKI: Ninety three they're short.

MR. WEISS: \$18,600 is how I...

MS. COFONI: Ninety three. So you're short 93. Ninety three trees.

MR. SCHAECHTER: I'm one for the Tree Bank. When it comes to taking down trees and putting up the proper. I think it's the right thing to do for the community and...make the payment to the Tree Bank.

MR. FLEISCHNER: If indeed the money goes for trees because this Board has no say anymore...only the mayor does.

MR. SCHAECHTER: We have not had issues with that. We should earmark it for the Tree Bank and...

MR. MANIA: Absolutely.

MR. FLEISCHNER: For trees only.

MR. MANIA: Trees only. Exactly.

MS. COFONI: We can't change the ordinance.

MR. SCHAECHTER: It helps the community.

MR. MANIA: (Inaudible) Board of Ed?

MR. SCHAECHTER: It helps the community out.

MR. MANIA: It really does.

MR. SCHAECHTER: For the park, you know. For whatever else we need.

MR. MANIA: How many trees we give to the Board of Ed?

MR. SCHAECHTER: Sixty thousand dollars worth.

MR. MANIA: Ok.

MR. SCHAECHTER: Seventy trees, eighty trees, I don't know.

MR. MANIA: It's a no-brainer.

MR. SCHAECHTER: It was.

MS. COFONI: So you're looking for a contribution to the Tree Bank equivalent to the 93 trees?

MR. SCHAECHTER: Correct.

MR. MANIA: Right.

MR. SCHAECHTER: I would say that would be good.

MS. COFONI: Ok. Well we can make sure and specify when the time comes to vote. Whoever makes the motion can include either an approval or a denial of that waiver. That's not going to change the application. It's not the type of waiver that will make it impossible. The (inaudible) it's just a matter of whether or not they're going to go forward with that.

MR. MANIA: How much does it equate to? The 93 trees.

MR. SCHAECHTER: It's under \$19,000.

MR. MANIA: How much?

MR. SCHAECHTER: It's under \$19,000.

MR. WEISS: \$18,600. Let's move on. Let's move on.

MR. MANILIO: I just want to put on the record that we are planting more trees than the previous application as far as full-sized trees and we're retaining more trees on the property. So the applicant is getting punished by...

MR. RUSSELL: All good things.

MR. MANILIO: All good things... As far as changes to any other changes to the site...there are some minor changes to lighting. Light level is pretty much the same as last time, just relocation of poles and (inaudible). And there's no changes to the application that goes to Lot 6. Everything has stayed the same.

MR. BUCZYNSKI: Except this is a few less parking spaces allocated to that. That lot I believe.

MR. MANILIO: Lot 6?

MR. BUCZYNSKI: I think so based on your plan. Based on your summary in the front, the way I was reading it anyhow. Existing parking...

MR. MANILIO: Right from the original application has not changed. There are eight parking spaces that were removed because of the driveways but that was (inaudible). No changes since the original site plan.

MR. RUSSELL: What is the existing building to the left?

MR. MANILIO: It is Subaru 46.

MR. RUSSELL: Huh?

MR. MANILIO: It is Subaru 46.

MR. RUSSELL: Because your sign indicates, says you're putting up a Kia sign.

MR. MANILIO: Right, so, under the old application this was going to be a Kia franchise. As of right now we do not have a franchise that is going to be in there. It is to be determined. But we are asking for the sizes that was previously approved as far as Kia is concerned. The freestanding sign or two signs on Lot 6 and no freestanding signs on Lot 5.

MR. SCHAECHTER: I think the owner of Kia would be pretty upset if you put a Kia (inaudible).

MR. FASTERT: Across the street.

MR. WEISS: These are going to be run as two separate entities right? Two separate businesses?

MR. STEIN: Yes.

MS. COFONI: So just since we're talking about the sign...so you're a commercial establishment. May have one freestanding sign with a sign area not to exceed 90 square feet. Two freestanding signs are proposed on Lot 6...one existing and one proposed. Ok, so the existing is 88.75 square feet and the proposed is 42 square feet so that's unchanged variance.

MR. STEIN: That is correct.

MS. COFONI: Ok. I just wanted to make sure I get clear what we're....

MRS. NATAFALUSY: Two variances for two signs on one lot.

MS. COFONI: Yup. Ok. I see the impervious coverage variance. The retaining walls are now....I wrote that somewhere but I don't see it now. 24. You know it says terraced retaining walls in excess of four feet are proposed with a horizontal distance of seven feet between walls.

MR. FLEISCHNER: That's gone.

MR. STEIN: That was part of the original application. That's gone now. The new application (inaudible).

MS. COFONI: I know but this is on the current plan.

MRS. NATAFALUSY: That's on the plan.

MR. MANILIO: That will be revised. Terraced walls.

MS. COFONI: Ok. Ok, so no terrace.

MR. MANILIO: You still have one (inaudible). By the dumpster enclosure.

MS. COFONI: Oh, you have one terraced? Alright. Ok. One small but basically you want a variance for that?

MR. MANILIO: Yes.

MS. COFONI: Ok. And then the last variance, oh, and so that's a variance for the tree replacement.

MR. FASTERT: Would that be a waiver?

MR. STEIN: We listed it under variances but I thought it was actually a design waiver.

MS. COFONI: Ok, well what's your...

MR. BUCZYNSKI: It's a design waiver.

MS. COFONI: It's a waiver? Ok. Is it in the zone?

MRS. NATAFALUSY: No, it's in the...

MS. COFONI: Design.

MRS. NATAFALUSY: Yeah.

MS. COFONI: Ok.

MRS. NATAFALUSY: Design Guidelines.

MS. COFONI: Ok, so we'll put that down there as a waiver for the tree replacement...which you're requesting. And the other waiver...

MR. MANILIO: It's for stall sizes.

MS. COFONI: Yup. And you're going to have...

MR. MANILIO: Parking stall sizes are required to be 9 by 20 or 8 by 10. We're proposing stall sizes of 8 by 18 and for inventory parking.

MS. COFONI: Ok, let's just...it says storage parking stalls of 8 by 18 and display and employee parking stalls of 9 by 18 are proposed. Where...oh, I see. Ok. Where a minimum parking stall sizes of 10 by 18 or 9 is required...ok. I understand that. And you have no buffer between the parking lot and the street so you need a variance from that.

MR. MANILIO: We do have...we did add some shrubs.

MR. STEIN: That was a variance that was granted in the prior application and it's the same except we added some shrubs (inaudible).

MS. COFONI: Ok. And then the last waiver that we're talking about is...trees shall be staggered in or spaced so as not to interfere with driver vision at intersections (inaudible). So is that just because your parking area is going to be visible from Route 46?

MR. MANILIO: Yes.

MS. COFONI: Which if I remember correctly from the last application...is on purpose.

MR. STEIN: Yes.

MS. COFONI: Right. Marketing. Yeah. Makes sense. Ok. Ok. I apologize for....I just wanted to make sure I had those all clear.

MR. WEISS: Ok.

MR. MANILIO: (Inaudible)

MR. WEISS: Were you going to talk a little bit about the fifth or A-5...or the fourth picture that you gave us?

MR. MANILIO: That was the previously approved landscaping plan.

MR. WEISS: A-5 the date is June 22...

MR. MANILIO: June 22, 2009. Last revised March 18, 2010.

MR. WEISS: And this is A-5 is the landscaping signage plan.

MR. MANILIO: Correct. This plan shows what was previously approved as well. As landscaping is concerned, all existing trees were to be cut from the site with the exception of a couple of trees down here on the south corner. New trees and shrubs were to be planted along the rear or the north side of the property along the residential (inaudible). Seventy two nursery-stock trees, 80 whips which included 1 inch caliper trees and smaller caliper trees for (inaudible) and as far as shrubs we're going to plant 143 shrubs. (Inaudible).

MS. COFONI: Mr. Stein can I just ask you a question? Really quick. Just because I actually didn't get this distinction before but your previous approval was for Lot 5 and Lot 6.

MR. STEIN: Correct.

MS. COFONI: This is just for Lot 5. Is that correct?

MR. STEIN: No, we applied for Lot 5 and Lot 6.

MS. COFONI: Ok, so it's amended for both.

MR. STEIN: Yes, it is.

MS. COFONI: Ok.

MR. MANILIO: So (inaudible) plant 75 trees and (inaudible) shrubs. Additionally, mention that are being disturbed (inaudible) tall grass as required by the DEP as well. So landscaping is (inaudible) approved. (Inaudible).

MR. WEISS: Ok. So I know you had said earlier you had wanted to review the engineer's report.

MR. MANILIO: Yes.

MR. WEISS: Gene, why don't you go through the report?

MR. BUCZYNSKI: (Inaudible) to Page 2 on the grading. (Inaudible) what I had on original plans tending to the concern regarding the excavation required for cuts for the building which has increased. You can't do much about it because that's what the DEP wants us to do but I think prior to construction, a condition here that they submit the geo-technical report and the borings that you said you're going to make. Just to have that submitted to the Town for review prior to construction in case there's any other concerns you might have.

MR. MANILIO: Didn't have an issue.

MS. COFONI: Gene why are you...I'm sorry.

MR. BUCZYNSKI: (Inaudible) cut the grading. Third paragraph revised (inaudible).

MS. COFONI: Ok.

MR. BUCZYNSKI: Cuts ranging from 20 to 24 feet to the paved areas. Just concerned regarding what they find when they go down far deep.

MS. COFONI: Got it.

MR. BUCZYNSKI: The continuation on that we've pretty much discussed relative to Item #1 pertaining to the terraced wall and we kind of already discussed that variance. But we do need design calculations for those walls to be submitted. I believe you're going to do that.

MR. MANILIO: Yup.

MR. BUCZYNSKI: Can you discuss Item #2 regarding existing rear yard fence? There seems to be more happening back there. Any discussions with the adjacent property owner? I know that came up in the first application.

MR. MANILIO: (Inaudible) the previous application. The decision was that the areas that were being used on our property, Lot 5 (inaudible) not used anymore and that the shed would be relocated.

MR. BUCZYNSKI: But they added more stuff on their property now. They have this pool equipment there too. When's that going to be addressed?

MR. STEIN: They will receive a letter from me advising them to remove their encroachments from our property.

MR. BUCZYNSKI: Because that's more than before.

MR. STEIN: It's more than before. They took a liberty and now they've taken a bigger liberty so that... In fact, (inaudible) was he was very unhappy about that and I didn't know whether that occurred before August 10, 2004 or after August 10, 2004 because if it occurred after they're going to go after that person for a Highlands violation.

MR. BUCZYNSKI: Oh, really?

MR. STEIN: Yeah. I said, I don't know if it was before or after and it was kind of dropped at that point.

MR. BUCZYNSKI: We're the state; we're here to help you.

MR. STEIN: We would have them remove it from our property.

MR. BUCZYNSKI: Ok. So that's going to be addressed.

MR. STEIN: We will address that. The encroachments will be removed.

MR. BUCZYNSKI: Stormwater Management, I know you received a report from Morris County Planning Board. Are you in the process of addressing those concerns they have?

MR. MANILIO: Their recommendation was to provide pervious pavement, the parking lot. Our response is that the storm water plan needs to state requirements that were approved by the DEP and we're not going to pursue the pervious pavement.

MR. BUCZYNSKI: I don't have a problem with that. Item number...

MS. COFONI: Wait, Gene, what about Number 2?

MR. BUCZYNSKI: We're going to go back over that. I'm sorry.

MS. COFONI: You're going in a different order. Ok.

MR. BUCZYNSKI: Item Number 2, I think we might have discussed this last time. Seems like you didn't cover all the areas.

MR. MANILIO: Well, I did take a look at that. We'll include that calculation to the revision. But it's a very small area. There's actually (inaudible).

MR. BUCZYNSKI: To be included in revised calcs?

MR. MANILIO: Yup.

MS. COFONI: I'm sorry, Gene.

MR. BUCZYNSKI: Item Number

MS. COFONI: Four. Are we using pervious pavement or no?

MR. BUCZYNSKI: No. That was just a...not a directive...but an advisory, you know from the Planning Board....The Morris County Planning Board.

MS. COFONI: Ok and your next one was Number 3?

MR. BUCZYNSKI: I'm going back to Number 2. We just discussed. They're going to do. They're going to submit revised calculations.

MS. COFONI: Ok. Ok. Number 3.

MR. BUCZYNSKI: Item Number 3 regarding the distance between a pipe and the septic system. Have you discussed that with the Health Department yet?

MR. MANILIO: Yeah we actually have the Board of Health approval but we will have all those pipes as water tight.

MR. BUCZYNSKI: Ok. Pipes to be water tight. They didn't comment on that? Because they usually do.

MR. MANILIO: They didn't. (Inaudible) water tight as well.

MR. BUCZYNSKI: Ok. The site access, just about the regulatory signs regarding left turn issue remains. Item Number 2, fire lanes. Fire lane. Did you discuss that with the Fire Marshall?

MR. MANILIO: We'll work with the Fire Marshall. I believe we satisfied him last time around but we'll show him the plans.

MR. BUCZYNSKI: There's nothing shown on the drawings, right?

MR. MANILIO: No.

MR. BUCZYNSKI: So discuss with Fire Marshall and show him the plans, right?

MR. MANILIO: Correct.

MR. BUCZYNSKI: You got agency approvals. Do you have the DOT yet?

MR. STEIN: We actually got the DOT approval and it expired because of the time it took to get through DEP.

MR. BUCZYNSKI: Ok, so I'll need (inaudible).

MR. STEIN: We have to renew it. We do have Soil Conservation approval. We previously had Health Department approval but we will have to do it again obviously. And we do have Morris County Planning Board approval.

MR. BUCZYNSKI: Ok. That's all.

MR. WEISS: You have those notes as to conditions?

MS. COFONI: Yes. I have all that.

MR. WEISS: Mr. Manilio, anything else?

MR. MANILIO: That's it unless the Board has other questions of anything... That's our presentation.

MR. WEISS: Anybody have any engineering questions. I should open it to the public. I see nobody from the public has any questions. I thank you for your testimony tonight. And we'll come back to Mr. Stein. Do you have anything else?

MR. STEIN: I have nothing else, Mr. Chairman. As I said at the very outset, I apologize that we had to come back here and do this again. The first plan was good. This one is ok. But that's what DEP will allow us so we would respectfully request the variances and waivers that have been discussed in testified to tonight and the approval of the amended amended preliminary and final site plan approval for Lot 6 and preliminary and final approval for Lot 5.

MR. WEISS: Ok, so we really need to have a discussion about the waiver request from the tree ordinance I believe. We should separate that. I would imagine that would be a concern. I've certainly heard from John and Brian. Does anybody have a concern?

MR. FASTERT: I concur if that's what you're asking.

MR. WEISS: Yeah, any other opinion about.... Looks like John and Brian and now Henry has suggested that we not make the waiver from the tree ordinance.

MR. FLEISCHNER: The only thing that I would request is that the money be used for trees....not diverted to any other...

MRS. NATAFALUSY: It goes in the Tree Bank.

MR. FASTERT: I don't think we have any purview over that.

MR. FLEISCHNER: But it's at the Administration's....

MR. WEISS: I don't think we have any control over that.

MR. MANIA: No, that's the mayor.

MR. SCHAECHTER: And I do think that when we approach the Town in the past and we got clarity from Sherry on the Tree Bank...that is...those funds are sequestered for trees.

MR. MANIA: Absolutely. Absolutely.

MS. COFONI: So I don't know if the Board wants to take a separate vote on the waiver or if there seems to be a consensus...you can make it all as part of your motion but...

MR. MANIA: I don't know how the rest of the Board feels, I mean...

MS. COFONI: We can certainly entertain a motion just with regard to the waiver; get that out of the way and...

MR. WEISS: Let's do that then.

MR. FASTERT: That's probably simpler.

MR. WEISS: Let's take a vote on...somebody make a motion that we'll vote to not waive, not grant a waiver or...

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

MR. WEISS: I was going to give you two options though. Either we're going to grant a waiver or we're not going to grant a waiver so John...

MR. MANIA: Making a motion to grant....

MR. WEISS: Hold on one second.

MR. BUCZYNSKI: We talked about the difference of 75 trees but they also...just for (inaudible) they do have 207 shrubs...

MS. COFONI: No, you said 103.

MR. BUCZYNSKI: Your planting schedule shows 83 (inaudible), 104 (inaudible). They add up to 207 unless I'm reading something wrong.

MS. COFONI: Yeah, because you said 75 trees and 103 shrubs.

MR. BUCZYNSKI: But when I count them I get 104, 83 and 20. I'm not trying to fight your case for you but...

MR. MANILIO: No, no, you're right.

MS. COFONI: Ok, so how many shrubs are we talking about here?

MR. BUCZYNSKI: Two hundred and seven.

MR. MANILIO: 207?

MS. COFONI: Ok, so...

MR. MANIA: Thank you, Gene.

MR. BUCZYNSKI: Just saying it's there. (Inaudible) make any consideration toward the number of trees. Just letting the Board know.

MS. COFONI: But the replacement is for specifically trees. Like the shrubs don't count.

MR. BUCZYNSKI: The shrubs are not supposed to count.

MR. WEISS: But maybe they should.

MS. COFONI: Well, it's just whether or not you guys want to...

MRS. NATAFALUSY: That's a good amount...

MS. COFONI: Technically the ordinance, the shrubs don't count.

MR. BUCZYNSKI: (Inaudible) pretty much amount of extra plantings on the site is what I'm saying.

MR. WEISS: There's a lot of plantings. I think they've gone overboard. They've done a very nice job with their plantings. They're cutting down less trees. I haven't publicly stated what my opinion is but you'll hear soon that I'm not in favor of... I am in favor of granting a waiver in the form of a compromise. I know we haven't really discussed a compromise.

MR. MANIA: I'd like to know what the compromise is.

MR. WEISS: I would think the applicant would come and deliver a compromise and when we don't hear one, I don't think we can...

MR. STEIN: Could we have one minute Mr. Chairman? Mr. Chairman, the applicant would suggest a \$10,000 contribution to the Tree Bank.

MR. MANIA: What is the original number?

MR. WEISS: \$18,600.

MR. MANIA: 18?

MR. SCHAECHTER: Yeah. But they are going over in the shrubs.

MR. MANIA: Yeah, I could live with that.

MR. SCHAECHTER: I think that would be a good compromise.

MR. MANIA: I can live with that.

MS. COFONI: So you'd be granting a waiver but the waiver would be 75 trees, 207 shrubs and \$10,000 to the Tree Bank.

MR. WEISS: Ok, so that being said...

MR. MANIA: That's the way my motion will...

MR. WEISS: So you're going to say that we...

MR. SCHAECHTER: Grant it with all variances...

MR. WEISS: Grant the waiver.

MR. FLEISCHNER: We're just talking the waiver now.

MR. WEISS: We're granting the waiver from the tree ordinance with the understanding that there will be a \$10,000 contribution, 207 shrubs and 75 trees.

MR. FLEISCHNER: And \$10,000.

MR. WEISS: I said that. Ok and you're comfortable with that....I see an affirmative. Ok, so that motion has been made by Mr. Mania.

MR. FASTERT: I'll second it.

MR. WEISS: And seconded by Henry. So a yes vote will grant that waiver with the conditions as I read. Catherine.

Roll Call:

Joe Fleischner	- yes
Brian Schaechter	- yes
Henry Fastert	- yes
John Mania	- yes
Dan Nelsen	- yes
Nelson Russell	- yes
Howie Weiss	- yes

MR. WEISS: That's a fair compromise. Ok, so we've have some conditions that we've talked about if we were to grant the waivers and variances as mentioned tonight. Tiena why don't you...

MS. COFONI: I don't have a lot of them but, well I shouldn't say that. I have the provisional subsurface borings according to Gene's report. Design calculations for the retaining walls. The removal of the encroachments from the adjacent property.

MR. BUCZYNSKI: Revised storm water calculations.

MS. COFONI: Yup. Revised drainage system. Oh, the pipes have to be water tight.

MR. WEISS: And Board of Health approval.

MS. COFONI: I'm sorry?

MR. WEISS: And Board of Health approval. Amended.

MS. COFONI: Yup, ok. I put the condition next to that. Yup.

MR. SCHAECHTER: Fire Marshall.

MS. COFONI: Where's that one? Oh yeah. Fire Marshall and also the existing access drive, the signage...

MR. BUCZYNSKI: To remain.

MS. COFONI: The signage to remain. And then NJDOT and Mount Olive Board of Health approval are required and any other conditions that still apply. I just want to flip to the previous resolution. I will be carrying those forward as well. There's extensive commissions with regard to and maybe we'll just go through and make sure we still want these. The general ones...all external lights shall be turned off except security lights within one hour after closing further all exterior lighting shall be adequately shielded so as to prevent a glare onto adjacent properties. Prior to execution of final plans by Township plans shall be revised showing the relocated bio-retention basin on Lot 5. Was that already done?

MR. MANILIO: That's on the main plan, yes.

MS. COFONI: So that one we don't need any more.

MR. BUCZYNSKI: I have one more item that we forgot about.

MR. STEIN: In the detention basin

MR. BUCZYNSKI: If you don't mind...

MR. STEIN: No, go ahead.

MR. BUCZYNSKI: In the detention basin now it shows various trees to be planted. Was that part of the DEP requirement?

MR. MANILIO: Yes.

MR. BUCZYNSKI: Ok.

MS. COFONI: The plan shall be revised to include a 6 foot high black coated vinyl chain link safety fence at the top of all retaining walls.

MR. STEIN: That's on the present plan.

MS. COFONI: That's on the plan so we need to make it a condition. Plans to be revised to comply with the ordinance requirements with regard to landscaping on site. I'm assuming that's what we just addressed.

MR. BUCZYNSKI: I think so.

MS. COFONI: And I will make, I'm going to make that a condition too...the waiver provisions. Applicant shall revise plans to provide the proposed 18 inch high wall with plantings that will surround both freestanding signs.

MR. STEIN: That's on our present plan.

MS. COFONI: Ok. Shall obtain approval from Fire Marshall regarding the location of fire lanes and plans. We're going to keep that?

MR. BUCZYNSKI: Yes.

MS. COFONI: The following conditions or approvals shall be satisfied prior to issuance of a building permit and prior to any disturbance. That's just approvals from.... Site inspection of the existing site conditions to ensure all conditions of original approval are satisfied. We still need that condition, Gene?

MR. BUCZYNSKI: Yes, I think so.

MS. COFONI: Number 2? Ok. Review by Highlands Council and subject to Highlands Water Protection.

MR. BUCZYNSKI: That's been done already.

MR. STEIN: We have that approval.

MR. BUCZYNSKI: Want to send them again?

MS. COFONI: Cross that one off. Proposed cross access easement agreement. We'll still need that.

MR. STEIN: That's done. Recorded and was made as part of our application.

MS. COFONI: Ok. Designer septic system subject to Health Department approval. Orange construction fences shall be around the property boundary. Test soil borings must be performed in the associated geo-technical report approved by the Township engineer. That wasn't done, right?

MR. BUCZYNSKI: Right.

MS. COFONI: Yup. Ok.

MR. BUCZYNSKI: Other things too we should add the preconstruction meeting and also the developers agreement. (Inaudible).

MR. FASTERT: You had mentioned about the trees being placed in the detention basin. Does the DEP specify the type of tree? Lots of trees won't...

MR. BUCZYNSKI: I imagine that

MR. FASTERT: Lots of trees won't withstand that.

MR. BUCZYNSKI: I think that's why he specified, correct?

MR. WEISS: I have one question, Gene. On Page 3 of your report, Item Number 4 under stormwater management. I believe we said we will allow the applicant not to use pervious pavement.

MR. BUCZYNSKI: Yes. Correct.

MR. WEISS: The record should show because your report, you're strongly considering it and then we agreed...

MR. BUCZYNSKI: That's where the applicant, based on Morris County report, they strongly recommended it.

MR. WEISS: The applicants...and we're going to allow them not to do it.

MR. BUCZYNSKI: Right.

MR. WEISS: Should we note that though for the record?

MS. COFONI: Yeah. I have that.

MR. WEISS: You do? Ok. I don't have anything else. I don't think there's anything else. So with those conditions and asking for approval of the variances and design waivers....

MR. RUSSELL: I'll move for approval of the variances and design waivers...

MR. MANIA: Howie, did you open to the public yet?

MR. WEISS: I didn't do that yet. Sorry.

MR. STEIN: You actually did, Mr. Chairman. You said there's no public...

MR. WEISS: Ok, well thank you. I guess I did. Nelson, you were saying?

MR. RUSSELL: Subject to the variances enumerated.

MR. MANIA: I'll second it.

MR. WEISS: Ok. Nelson motioned and John seconded it. Any conversation or question? Seeing none. Roll call.

Roll Call:

Joe Fleischner - yes
Brian Schaechter - yes
Henry Fastert - yes
John Mania - yes
Dan Nelsen - yes
Nelson Russell - yes
Howie Weiss - yes

MR. WEISS: Gentlemen, thank you very much.

MR. STEIN: Thank you, Board members. It's greatly appreciated.

MR. MANIA: Good seeing you.

MR. WEISS: Nice to see you. Good luck.

MR. MANIA: And Mr. Stein, it's been so long.

MR. STEIN: It's been a while, yes.

MR. WEISS: Before we adjourn we have just two quick things. Tiena I want to review with an action item. We have an open issue with the outdoor sign of the New Jersey Transit property (inaudible).

MS. COFONI: Yeah.

MR. WEISS: Ed said he was going to prepare, whether you prepare with him.

MS. COFONI: Actually, in that memo the administrator had asked Fred Semrau's office to look into it and in order not to (inaudible) efforts...especially if we were going to come to a conclusion. I've been reaching out to Fred Semrau's office to see where that stands to let you know. I haven't independently done any research on that because the direction was given for his office to do it and I didn't want the ton of paperwork. So I will continue to reach out and get an answer and report back to the Board on where we stand with that.

MR. WEISS: Fair enough. Joe?

MR. FLEISCHNER: I would like to propose a change in the bylaws of the Planning Board that if a member misses more than fifty percent of the meetings, excused or unexcused, other than those representatives that cannot hear a use variance because that would not be fair, that they be dismissed from the Board. Because if you miss more than fifty percent what the hell is your commitment to the Board?

MR. WEISS: And I think that the issue, and Joe makes a good point, isn't the language in our rules of procedures, just summarize it by saying an unexcused absence. So I think what Joe is suggesting is that an excused, unexcused...

MR. FLEISCHNER: Even if you have a job that takes you away more than fifty percent of the time, why are you even on the Board? Because I mean every member here makes a contribution and I just don't see why you would still be on the Board. And obviously, it would be evaluated at the end of each year because for someone during their term. It's your last year and you only show up three meetings, well then you only show up three meetings. But then you should not be reappointed. I would hope that the Mayor would not reappoint someone who shows up out of a possible 23 meetings, shows up for 3 meetings would be reappointed because you make a commitment to the Township.

MR. MANIA: I think before we vote on something like that I think we should address that with the mayor and see what his sentiments are. He's the guy that appoints people to the Planning Board so we should at least give him the opportunity to give us some feedback.

MR. FLEISCHNER: And I understand that but the Planning Board is also an autonomous Board.

MR. WEISS: John, I'm going to agree with Joe. I'm going to disagree with you because we have our own rules and procedures. I'm actually looking for it.

MRS. NATAFALUSY: The rules and procedures.

MR. WEISS: We won't act but I think as a Board if somebody's violating our rules and procedure then perhaps a memo to the mayor says this member is not...

MR. MANIA: That's what I'm saying. We need to have some guidelines with the mayor.

MR. FLEISCHNER: Right but if they violate it then we can say to the mayor "Listen this person..."

MR. MANIA: This person hasn't attended the meetings.

MR. FLEISCHNER: But at least when, because our first meeting of every year clearly everybody gets a copy of the bylaws and...

MR. MANIA: So they know what to expect.

MR. FLEISCHNER: They know what the rules are and if they feel at that point....

MR. MANIA: Joe you make a point because when I was Chairman of the Planning Board and we had the Trade Zone came in we had four meetings a month. Four. Because Les Smith was under the gun and he had tenants moving in and he needed...

MR. FLEISCHNER: And you got to get it done.

MR. FASTERT: And it wasn't just the Trade Zone.

MR. MANIA: A big, big ratable like that coming in I said I have no problem with four meetings. Well some of the members turned around and said to me I only came on board because they told me it was two meetings a month. Well I said to them, very nicely, if you can't make four meetings then you need to leave. We need to replace you.

MR. FLEISCHNER: What I'm proposing is just these are the rules. You know what it is when you join the Board and this would not go into effect....I'm saying this would not go into effect until January.

MR. FASTERT: Does the Board have the power to dismiss someone?

MR. WEISS: No.

MR. MANIA: That's why I'm saying...

MR. FASTERT: It has to go to mayor anyway so it's just going to be a recommendation from the Board.

MS. COFONI: No, it's too many things. I think what Joe is proposing, Joe correct me if I'm wrong, a change to your what do they call it...

MR. MANIA: Bylaws.

MRS. NATAFALUSY: Our Rules and Procedures.

MS. CONFONI: Rules of Procedure. The Planning Board has the ability to change the Rules of Procedure.

MR. FASTERT: Right.

MS. COFONI: So then, say you, you say "Yup, you're right." Let's change the Rules of Procedure so if you are absent from more than fifty percent of the meetings you're...

MR. MANIA: Inexcusable absences.

MR. FLEISCHNER: No. No. No. Total absences. You can always find an excuse to say... If you've got a job that prevents you from attending greater than fifty percent then you don't belong on the Board. So if

you know those rules right up front that maybe makes a determination whether if whoever the mayor is says...

MR. WEISS: I can read it to you. I have it. It says it's Rule 4.4 Attendance. The determination of vacancy for excessive absences. Members and alternate members shall be required to attend meetings of the Planning Board. Failure of a member or alternate member to attend Planning Board meetings for a period of four consecutive meetings shall be referred by the Planning Board in writing to the appointing authority for determination as to whether said member should be removed from (inaudible).

MR. MANIA: Right. So we have it already.

MR. WEISS: In the event that said member or alternate member is removed by an appointing authority for cause, the appointing authority shall fill the vacancy for the unexpired term in the matter prescribed by law. The rule shall be automatically amended by operation of law in the event that the above standards are made more strict pursuant to amendment henceforth....this is where you guys got involved with the henceforth...of NJSA 40A:9-12.1 or other relevant prevailing and then it just goes on but....

MS. COFONI: So that says if you miss four meetings.

MR. SCHAECHTER: Four in a row. It says four consecutive meetings.

MS. COFONI: So you want to change four consecutive to fifty percent?

MR. FLEISCHNER: I want to say, in addition to four consecutive, I want to add that if you miss fifty percent of the meetings within the course of one year same thing applies.

MR. FASTERT: And the mayor can choose to do what he cares to... He may dismiss the member. He may not but...

MS. COFONI: Right. It's not for us to....

MR. SCHAECHTER: Why would we do it for a year? I mean a year means you're already making a farce out of this Board by not showing up. Because we've all (inaudible) a commitment and we're typically all here. And if you're going to miss fifty percent, that's a huge amount of meetings. Whether it's for a year, whether it's....a month is too short....that's two meetings but you know we've got someone who's obviously not committed to this Board and it takes a lot of time for Catherine to prepare for these meetings.

MRS. NATAFALUSY: We usually just say anybody with four unexcused absences. We've never...

MR. WEISS: But it doesn't say that. Catherine (inaudible). It doesn't say that.

MRS. NATAFALUSY: (Inaudible) unexcused absences.

MR. FASTERT: So the only caveat and it's not in the rule currently, is the one that Joe mentioned. There are people here, John and myself, there are applications that we can't hear.

MR. FLEISCHNER: Right. Because you can't hear. And that's not...

MR. MANIA: We don't have a choice.

MR. FLEISCHNER: You don't have a choice.

MR. FASTERT: We have to put that caveat in.

MR. FLEISCHNER: Right. That caveat should be in there.

MR. FASTERT: Which it isn't currently.

MRS. NATAFALUSY: That would be in January for the new Rules and Procedures for next year.

MR. SCHAECHTER: Well can't we amend our Rules and Procedures at any time?

MRS. NATAFALUSY: And going forward this is our new policy?

MR. SCHAECHTER: Yeah.

MR. FASTERT: It probably doesn't matter because we're going to do it over the course of a year anyway so...

MR. SCHAECHTER: I think, let's get this out in the open now. We have a member who is never here and when that member is here it's like she's never here anyway.

MR. FLEISCHNER: Which is also true. And he's not saying anything that's not true and that doesn't contribute to...it's not fair to every other person on this Board.

MR. SCHAECHTER: It's absolutely right. The mayor has the right to appoint anybody...anybody that he'd like to appoint. But on the other hand I'd like members of the Board that contribute and add some positive feedback.

MS. COFONI: Ok, well let me ask you this...hypothetically speaking...wouldn't there already be a violation of that rule. That there wouldn't be any need to amend the rule?

MRS. NATAFALUSY: Right.

MR. SCHAECHTER: Has she missed four meetings?

MR. FLEISCHNER: Four consecutive...in a row?

MRS. NATAFALUSY: I believe so. I'd have to check. I'd have to check the...

MS. COFONI: I just want to see how it goes. Ok, so.

MR. NELSEN: Are they excused?

MR. FASTERT: It doesn't say that...the rule doesn't say that.

MRS. NATAFALUSY: Excused or unexcused.

MR. SCHAECHTER: Mr. Chairman, would it be part of your roles and responsibility to have a conversation with said member and say listen are you truly committed to being part of this Board? If you're not, let's just make this easy for everybody....

MR. WEISS: I would say yes it's part of my responsibility and I could also tell you I've already had that conversation. And I've been given an assurance that's it's a priority for this member and the most recent absences have been due to some training that takes this member out of the area.

MR. SCHAECHTER: And the other ones were just general...

MR. WEISS: And the other ones I can't speak to that but I did have that conversation and I do take that upon my...it's my responsibility to handle that. So...

MS. COFONI: It seems like the problem that people are speaking of is already addressed and there may not even need to be an amendment to the rules was my only point. The only difference is I wanted to see how it was kind of effectuated...I'm not sure if that's a word. It says...

MR. FLEISCHNER: My only concern...

MS. COFONI: Shall be referred by the Planning Board in writing to the appointing authority for a determination as to whether said member should be removed for cause. So, the Planning Board could make a motion that...

MR. FLEISCHNER: Not shall but should...our recommendation is that they should be removed.

MS. COFONI: Ok, you can make a motion that Catherine draft a letter that can go under Howie's signature to the appointing authority to make that determination.

MR. WEISS: Which is the mayor.

MS. COFONI: So you could certainly make...

MR. FLEISCHNER: My only concern is that someone could miss four, let's say they miss four meetings in a row and then they show up for...

MR. WEISS: I got one better. They missed three.

MR. FLEISCHNER: They missed three.

MR. WEISS: They could show up for one and then miss three again.

MR. FLEISCHNER: And then they miss another three. Then they show up for one and then they miss another three. So they've come to maybe four meetings and they've missed twenty meetings.

MS. COFONI: But this is already the existing rule.

MR. WEISS: But it says four in a row. What Joe just said (inaudible).

MS. COFONI: Right but the issue that you have has already, we're pretty sure, already falls under that rule.

MR. FLEISCHNER: Catherine has to check to see if it was four consecutive meetings.

MRS. NATAFALUSY: I'll check but I think it has been.

MR. BUCZYNSKI: I think has.

MS. COFONI: Which you don't have to change the rule, you can already make that recommendation. I don't know if you want to wait until she checks and then....

MR. FASTERT: We're just trying to solve that one situation. Now that we don't need to change the rule.

MR. SCHAECHTER: The bottom line is it's going to be up to the mayor on whether he wants to...

MS. COFONI: But you have to make a motion to actually have that in writing referred to him under these rules.

MRS. NATAFALUSY: I'll check and I'll talk to Howie tomorrow about it.

MR. FLEISCHNER: Well my feeling is that I'll make a motion that should if the individual has missed four successive consecutive meetings that the Chairman send a written memo to the Administration.

MS. COFONI: Recommending that they shall be removed for cause.

MR. FLEISCHNER: Recommending that they shall be....cause. If you have no problem with that as Chairman.

MR. WEISS: I won't have a problem. I don't have a problem in dealing with it.

MRS. NATAFALUSY: It would be the mayor.

MR. FLEISCHNER: That would be if we need a motion to that effect.

MS. COFONI: We do and we would need a second. You made that motion.

MR. RUSSELL: I'll second it.

MS. COFONI: Nelson seconded it.

MR. WEISS: Ok, all in favor?

BOARD: Aye.

MS. COFONI: Opposed?

MR. WEISS: Any opposed?

MR. MANIA: Any abstentions?

MR. WEISS: This is nothing to abstain about.

MS. COFONI: Ok.

MR. FLEISCHNER: Just to be fair to everybody.

MR. WEISS: It's unanimous. It's a unanimous request that if there's been four meetings missed I will draft a letter.

MR. SCHAECHTER: Four consecutive.

MR. BUCZYNSKI: I move for adjournment.

MR. FASTERT: This way there could certainly be extenuating circumstances. You can miss four meetings in a row because you were in the hospital for two weeks.

MR. SCHAECHTER: But that's up to the Chairman and the rest of the Board to decide.

MR. FASTERT: Right so we have that discretion so it's not like, "Ok (inaudible)".

MR. MANIA: Like I had open heart surgery.

MR. FLEISCHNER: That's no excuse John.

MR. WEISS: Let's make sure we don't put ourselves in a bad position because let's use another real-life example. John, you vacation in the winter. You're gone for...

MR. MANIA: Two months.

MR. WEISS: Four meetings. But then you're here the whole rest of the year. So, by letter of the law...

MR. SCHAECHTER: He's not appointed by the mayor.

MRS. NATAFALUSY: You're done. You're out.

MR. FLEISCHNER: He's not appointed by the mayor.

MR. FASTERT: But we have to vote.

MRS. NATAFALUSY: He's a Planning Board member.

MR. WEISS: He's still be appointed by the Council. The Council would get the letter. The point is we have to use discretion.

MS. COFONI: That's exactly right. You have your discretion and I'm talking about John in this (inaudible).

MR. SCHAECHTER: When John's here he's an active member.

MR. WEISS: Don't forget the active member. I think when John is here he's at the meeting so we understand John goes away and I'm sorry for using you as an example but when John is home, he's here.

MRS. NATAFALUSY: If we let him.

MR. MANIA: That's half of it. I said Catherine, when can I come to a meeting?

MR. WEISS: With discretion. I don't want this to be a blanket...ok you miss four you're out.

MR. FASTERT: Because we have to vote on it.

MR. WEISS: That if it happens again what happened tonight doesn't mean that John missed the votes. We have to take a vote.

MR. FASTERT: If a majority thinks there are extenuating circumstances the motion wouldn't be carried.

MR. WEISS: Ok.

MRS. NATAFALUSY: Alright. So I'll check the...and talk to you Howie.

MR. WEISS: We'll speak to that tomorrow.

MRS. NATAFALUSY: Are we done?

MR. WEISS: I think, Nelson, Nelson, you have something to say?

MR. FLEISCHNER: Say it again.

MR. RUSSELL: I move for adjournment.

MR. FLEISCHNER: Second.

MR. WEISS: All in favor?

BOARD: Aye.

MR. WEISS: Thank you.

(MEETING ADJOURNED AT 9:53 P.M.)

Transcribed by:
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