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MEETING IS CALLED TO ORDER:

MR. LEVITON: I'm going to call this meeting to order and ask everyone to stand for the flag salute.

SALUTE TO THE FLAG:

MR. LEVITON: Pursuant to section five of the Open Public Meetings Act, notice of this meeting was sent and advertised in the Asbury Park Press. A copy of that notice was posted on the bulletin board where public notices are displayed in the municipal building. In addition a copy of this notice is and has been on file and was available to the public in the office of the municipal clerk. Accordingly this meeting is deemed to be in compliance with the Open Public Meetings Act. Roll call please.

ROLL CALL:

MS. MOENCH: Mr. Cooper? Not with us tonight. Mr. Gregowicz?

MR. GREGOWICZ: Here.

MS. MOENCH: Mr. DiTota?

MR. DITOTA: Here.

MS. MOENCH: Mr. Rosenthal?

MR. ROSENTHAL: Here.

MS. MOENCH: Mr. Schertz?

MR. SCHERTZ: Here.

MS. MOENCH: Mr. Weiss?

MR. WEISS: Here.

MS. MOENCH: Mr. Mantagas?

MR. MANTAGAS: Here.

MS. MOENCH: Mr. Shalika?

MR. SHALIKAR: Here.

MS. MOENCH: Chair Leviton?

MR. LEVITON: Here. Okay our first order of business is to accept the minutes from June 16th. I'm sure you've all had time to review them. Will someone who was at the meeting and is eligible please make a motion to do so and then will someone second it?

MR. DITOTA: So moved.

MR. LEVITON: Thank you David.

MR. GREGOWICZ: Second.

MR. LEVITON: Thank you Bob.

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MS. MOENCH: It's David and Bob right?

MR. LEVITON: Yes.

MS. MOENCH: Okay.

ROLL CALL:

MS. MOENCH: Mr. Gregowicz?

MR. GREGOWICZ: Yes.

MS. MOENCH: Mr. DiTota?

MR. DITOTA: Yes.

MS. MOENCH: Mr. Schertz?

MR. SCHERTZ: Yes.

MS. MOENCH: Mr. Mantagas?

MR. MANTAGAS: Yes.

MS. MOENCH: Chair Leviton?

MR. LEVITON: Yes. Okay next there are three resolutions to be memorialized this evening. The first one is number ZBE2204, counselor.

MR. GLASS: Yes, thank you. This was an application for bulk variance relief with the applicant proposed to construct a twenty-four foot by forty-five foot approximate addition or 1,100 square feet. On behalf of their requested relief from the minimum front yard setback in R40/20 zone a setback, a minimum front yard setback is sixty feet. A 29.4 foot setback existed and a 30.2 foot setback was proposed. The applicant proposal was granted. There was a condition of approval placed on there that the applicant agreed to submit a grating plan to the board and the board's engineer for the ---

MR. LEVITON: Thank you Mr. Glass. Will someone make a motion?

MR. GREGOWICZ: I'll make the motion.

MR. LEVITON: Thank you Bob.

MR. MANTAGAS: I'll second.

MR. LEVITON: Thank you Basil.

ROLL CALL:

MS. MOENCH: Mr. Gregowicz?

MR. GREGOWICZ: Yes.

MS. MOENCH: Mr. DiTota?

MR. DITOTA: Yes.

MS. MOENCH: Mr. Schertz?

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MR. SCHERTZ: Yes.

MS. MOENCH: Mr. Mantagas?

MR. MANTAGAS: Yes.

MS. MOENCH: Chair Leviton?

MR. LEVITON: Yes. Next up was 2216, Mr. Glass.

MR. GLASS: This was also an application for bulk variance relief. If you will recall the applicant proposed to construct a 35 foot wide by 21 foot in depth by 25 foot high detached garage to replace a garage of similar size that had burnt down. After, as we went through the hearing, the applicant in the end requested four variances. I'll just go through them. The first one that private detached garage is for a dwelling may be designed for a maximum of three vehicles and shall not exceed 35 feet in width by 24 feet in depth by 15 feet in height whereas 25 feet in height was proposed. Secondly a detached garage may have a storage area occupying a maximum floor area of 12 feet in width by 24 feet in depth. The storage area shall not expand the floor area of the garage beyond the maximum permitted 35 feet in width by 24 feet in depth. In this situation the applicant proposed storage throughout the garage. Additionally no second-level of storage would be permitted. The applicant through testimony proposed second-level storage. Additionally no accessory building shall be constructed before the principle building was a proposed attached garage would be still constructed. The application was granted. There was a condition of approval, where the applicant agreed that no commercial or business activity would occur on the property.

MR. LEVITON: Thank you Mr. Glass. Will someone move to memorialize?

MR. GREGOWICZ: I'll make the motion.

MR. LEVITON: Thank you Bob.

MR. DITOTA: I'll second.

MR. LEVITON: Thank you Rob.

MS. MOENCH: I'm sorry who was the second?

MR. LEVITON: Mr. DiTota.

MS. MOENCH: Thank you.

ROLL CALL:

MS. MOENCH: Mr. Gregowicz?

MR. GREGOWICZ: Yes.

MS. MOENCH: Mr. DiTota?

MR. DITOTA: Yes.

MS. MOENCH: Mr. Schertz?

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MR. SCHERTZ: Yes.

MS. MOENCH: Mr. Mantagas?

MR. MANTAGAS: Yes.

MS. MOENCH: Chair Leviton?

MR. LEVITON: Yes and lastly was 2217.

MR. GLASS: Yes thank you again, another application for bulk variance relief. In this situation the applicant proposed to construct a five foot tall fence in the front yard setback, more specifically the front yard in the RAG zoning district is 100 feet. The applicant proposed to construct the fence at 76 feet from the front yard lot line. Additionally in a residential zone fences shall not exceed three feet in height and the proposed fence is five feet in height and the application was granted with no conditions.

MR. LEVITON: Thank you Mr. Glass. We need a motion and a second.

MR. MANTAGAS: I'll make the motion. ---

MR. LEVITON: Thank you Basil and we need a second.

MR. GREGOWICZ: I'll second.

MR. LEVITON: Thank you Rob.

ROLL CALL:

MS. MOENCH: Mr. Gregowicz?

MR. GREGOWICZ: Yes.

MS. MOENCH: Mr. DiTota?

MR. DITOTA: Yes.

MS. MOENCH: Mr. Schertz?

MR. SCHERTZ: Yes.

MS. MOENCH: Mr. Mantagas?

MR. MANTAGAS: Yes.

MS. MOENCH: Chair Leviton?

MR. LEVITON: Yes. Okay there are two public hearings tonight and the first one is number ZBE2219 and that would be Ms. Catapano. Did I say that correctly?

MRS. CATAPANO - yes

MR. LEVITON: You may come up and make yourselves comfortable. Once you get here Mr. Glass, the board's attorney, will swear you in. You can sit, be comfortable.

MRS. CATAPANO: Okay.

1 MR. GLASS: Start with you sir, if you well first off
2 could you please spell and state your name?

3
4 MR. CATAPANO: Anthony Catapano.

5
6 MR. GLASS: And then raise your right hand. Do you
7 swear or affirm that the testimony you're about to provide is
8 the truth, the whole truth, and nothing but the truth?

9
10 MR. CATAPANO: Yes.

11
12 MR. GLASS: And for you ma'am, please spell and state
13 your name.

14
15 MRS. CATAPANO: Della Catapano.

16
17 MR. GLASS: And again do you swear or affirm that the
18 testimony you are about to provide is the truth, the whole
19 truth, and nothing but the truth?

20
21 MRS. CATAPANO: Yes I do.

22
23 MR. LEVITON: Mr. and Mrs. Catapano, before we begin
24 would you please pull the mics back to your face and remember
25 that everything that we say and that we do is recorded and
26 then transcribed so the manufacturer suggests within like the
27 length of your thumb to speak into it.

28
29 MRS. CATAPANO: Oh okay.

30
31 MR. LEVITON: Okay. You're here tonight to legitimize
32 your fence, the extension of your driveway, your pool patio,
33 and I think that's it. Talk to the board and let them know
34 what brings you here tonight and about your application.

35
36 MR. CATAPANO: Okay so we're talking about the fence
37 in the back?

38
39 MR. LEVITON: The Board needs to address the
40 improvements as if they are not yet installed. Talk to them
41 and let them know what you need and why it's a problem and the
42 relief that you seek.

43
44 MR. CATAPANO: Okay so we put a fence up in the back
45 where the shed is. We added a pool I don't know eleven years
46 ago?

47
48 MRS. CATAPANO: Yeah eleven years ago.

49
50 MR. CATAPANO: Something like that.

51
52 MRS. CATAPANO: Yeah.

53
54 MR. CATAPANO: And I'm told the shed might be too
55 close to the fence, but the shed was there. So I'm looking for
56 a variance. I believe there was a variance given in 1988 from
57 what I see here on the paper and we're here for the driveway
58 too.

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60 MRS. CATAPANO: The front fence.

61
62 MR. CATAPANO: The front fence, the driveway.

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64 MRS. CATAPANO: Yeah.

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MR. CATAPANO: The driveway's right we added a new driveway.

MRS. CATAPANO: And we extended it.

MR. CATAPANO: And we extended it I think eight feet, but we're a little too close to the property according to the paperwork. I think it's six feet and we have to be ten and what else?

MR. CATAPANO: That's it, the front one.

MRS. CATAPANO: That's it, okay.

MR. CATAPANO: Yeah and what else?

MRS. CATAPANO: I think that's it. The other ones we have to get a permit for.

MR. CATAPANO: The other ones are permits, right.

MRS. CATAPANO: Yeah.

MR. CATAPANO: The deck is not attached to the house.

MRS. CATAPANO: Yeah.

MR. LEVITON: Okay so, okay so it's not the pool itself that's the problem. It's the patio and the patio is too close to the rear setback.

MR. CATAPANO: Okay.

MR. LEVITON: And there was a variance granted to the previous owner, but the work that they did wasn't compliant with what was permitted and it is your responsibility to bring that property back into conformance should the board not favorably act upon the application this evening. So let's get clear for the record Mr. Glass, he's a stickler for details. Your shed encroaches one foot into the side setback and two feet into the rear yard setback and Ms. DeFalco is the zoning officer it's likely that either her or her assistant identified the problem.

MRS. CATAPANO: Okay.

MR. LEVITON: Also the driveway is too close also to the side property line and it is two feet of an encroachment I believe. Is that right Nancy?

MS. DEFALCO: Driveway is two feet.

MR. LEVITON: Two feet so there is eight feet and ten feet is the minimum setback on the side and then lastly your patio encroaches thirteen feet into the front yard setback. I'm sorry your patio is a foot and a half encroaching into the rear setback and the fence is thirteen feet into the front and its six feet instead of three so there are a lot. That's at least three variances that they're requesting Mr. Glass can you quantify it for us?

MR. GLASS: If you really I believe that's actually six in total.

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MR. LEVITON: Yeah I see there are sub-variances with six different variances. Each one of them counts.

MR. GLASS: Correct because you're going from in the first one from just going I guess from top to bottom on the denial from the zoning resolution you would have from the side yard which would be one. From the rear yard which would be a second one. Then you would do the driveway would be a third. The swimming pool or the patio, however you want to term it, being a foot and a half too close would be the fourth and then the fence you would have two of those. One for the height and then one for the setback so that would be everything six total.

MR. LEVITON: Okay and now this board cannot just indiscriminately grant you relief. There's always basis and law in fact for granting relief and whatever we do is going to be documented. Earlier you heard we memorialized applications that we heard at our last gathering. You've got to satisfy positive and negative criteria. Were they given a packet?

MS. DEFLACO: Just before we start I just wanted to clarify it was the shed that received the variance not the pool patio.

MRS. CATAPANO: Right.

MS. DEFALCO: And in '88 when they received the variance the setback requirement was much different than it is today. Today they need allowances for smaller sheds whereas in the past you would have to follow the minimum setback requirement which their zone would be fifteen from the side and ten from the rear, but today sizes 100 square feet or less only need to be five and five.

MR. LEVITON: So you'd call this a pre-existing, non-conformance?

MS. DEFALCO: Not really because they don't conform to the approval that the board gave them in 1988. That's primarily why they're here today. So they can't use that ten year rule for the ZCCO because there's a violation of the zoning board resolution.

MR. LEVITON: Okay so now there's the matter of establishing a reason for us to grant the relief. So you need to establish that there's a hardship that runs with the property or that the work that was done somehow advances the purposes of the municipal land use law and so I'll go back and ask Janice they were provided with that information? They know their responsibilities? Okay give the board something that they can hang their hat on. They'd like to help you.

MR. CATAPANO: Well I mean everything is tied into the pool. We had a new electric back there was put in the shed. The gas lines run along the shed. The heat is back there. I mean it's all tied in.

MRS. CATAPANO: Yeah and they came out and approved everything at that time. We got everything approved. We didn't fail anything.

1 MR. LEVITON: You were approved for construction
2 permits.

3
4 MRS. CATAPANO: Everything.

5
6 MR. LEVITON: Construction this is different.

7
8 MR. CATAPANO: That's zoning I understand.

9
10 MRS. CATAPANO: Now we know that yeah. So everything
11 was already approved.

12
13 MR. LEVITON: Yeah and to be fair the shed's not your
14 fault. That was done by the previous owner.

15
16 MRS. CATAPANO: No but I love that shed.

17
18 MR. LEVITON: I understand. Let's go out to the
19 board. We'll start with Mr. Shalika.

20
21 MR. SHALIKAR: Yes so you're saying that in the shed
22 you have plumbing and you have electric.

23
24 MR. CATAPANO: Right the heater.

25
26 MR. SHALIKAR: The pool.

27
28 MR. CATAPANO: Yes and there's electric around the
29 shed.

30
31 MR. SHALIKAR: Situated in the shed?

32
33 MR. CATAPANO: Yes.

34
35 MR. SHALIKAR: So to move that shed would be a
36 hardship for you?

37
38 MR. CATAPANO: Oh without a doubt.

39
40 MRS. CATAPANO: Yeah.

41
42 MR. SHALIKAR: Okay no further questions.

43
44 MR. LEVITON: Mr. Rosenthal, thank you Josh.

45
46 MR. ROSENTHAL: I just had a question about the
47 extension on the driveway. There's a two foot issue, was that
48 part of the extension that caused that or was it already non-
49 conforming?

50
51 MR. CATAPANO: I'm not sure.

52
53 MR. ROSENTHAL: Nancy?

54
55 MS. DEFALCO: I'm sorry?

56
57 MR. ROSENTHAL: The driveway extension is that why
58 it's now non-conforming or was it previously non-conforming?

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60 MS. DEFALCO: Previously it was fine, a small
61 extension was added to close to the lot line.

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63 MR. ROSENTHAL: And that's causing the non-
64 conformity.

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MS. DEFALCO: That's another variance.

MS. DEFALCO: The Applicant applied to the board for one variance then we look at the whole property. I should also mention that when they put the pool in and put the fence up which is required by code the setback was 50 and as you all know the R20 changed to a 60 foot setback so that now leaves the fence in violation, but because they're here for the shed everything should just be addressed.

MR. LEVITON: Oh that makes a little difference doesn't it?

MR. ROSENTHAL: The height of the fence that you're seeking?

MR. CATAPANO: Is it six feet?

MRS. CATAPANO: What?

MR. CATAPANO: The fence.

MR. ROSENTHAL: Six feet?

MR. CATAPANO: Yes.

MRS. CATAPANO: Yeah I can't hear I'm sorry.

MR. ROSENTHAL: No further questions.

MR. LEVITON: Thank you Terry. Thank you Nancy.

MR. GLASS: If you don't mind just for the record, Nancy which of the six variances being requested which ones of them have come into effect? Which ones are required just by virtue of passage of time?

MS. DEFALCO: The fence in the front yard. They're both coming into effect, the three foot in height in the front yard and the six foot.

MR. LEVITON: And that's because?

MS. DEFALCO: His fence is in the front yard.

MR. LEVITON: The Township changed its ordinance for the front yard setback from 50 feet which you complied with when it was installed to 60 feet and now you're not in compliance and again Mr. Glass, he documents everything, you see takes copious notes. Okay, Adam.

MR. WEISS: Okay Mr. Shalika asked the big question I was going to ask so thank you Mr. Shalika. With regard to the pool you said you put that in eleven years ago?

MRS. CATAPANO: I think it's eleven now.

MR. CATAPANO: 2009.

MR. WEISS: Okay.

MRS. CATAPANO: Yeah.

1 MR. CATAPANO: That's a little older.

2
3 MR. WEISS: And my question for Nancy is was it
4 conforming at the time versus now?

5
6 MS. DEFALCO: Yes. At the time it was conforming
7 because there probably was only a three foot walk around the
8 pool.

9
10 MR. WEISS: Right.

11
12 MS. DEFALCO: So I don't know if during construction
13 of the pool add a little bit more concrete here, little bit
14 more there so now it's non-conforming.

15
16 MR. WEISS: But that part that extends over to make
17 it non-conforming what exactly is on that property? Is it a
18 pool deck or is it?

19
20 MS. DEFALCO: It's his pool patio, right so the
21 concrete patio around the pool. It encroaches the rear setback
22 by a foot and a half.

23
24 MR. WEISS: Okay and Mr. and Mrs. Catapano that would
25 be a significant hardship for you to have to break up that
26 concrete?

27
28 MR. CATAPANO: Oh yes.

29
30 MR. WEISS: And redo all of that.

31
32 MR. CATAPANO: Yes it would.

33
34 MR. LEVITON: Just for the record, the hardship has
35 to run with the land. It's topography, it's a shape. It can't
36 be a hardship financially for the applicant or for them
37 physically. It's got to run with the land.

38
39 MR. WEISS: Which leads to my next question.

40
41 MR. LEVITON: Okay.

42
43 MR. WEISS: To the extent that pool deck was
44 shortened or reduced in size by a couple of feet we're talking
45 about, a foot and a half, right? Would that impact in any way
46 one's ability to use the pool? Again without having seen it
47 and I apologize for not going to your property it's a little
48 unclear to me as to exactly where that is in relation to the
49 pool, the part that --- or goes over.

50
51 MR. CATAPANO: Yes it would be a problem.

52
53 MR. WEISS: Okay. Is there any pool equipment on that
54 area, a diving board, anything like that?

55
56 MR. CATAPANO: Yeah there's a board.

57
58 MR. WEISS: Okay. Alright I have no further
59 questions.

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61 MR. LEVITON: Thank you Adam, David.

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63 MR. SCHERTZ: Only one question when was the fence
64 installed?

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MR. CATAPANO: With the pool.

MR. SCHERTZ: With the pool?

MR. CATAPANO: Yes.

MR. SCHERTZ: And you installed the fence?

MR. CATAPANO: Yes.

MR. SCHERTZ: The entire circumference?

MR. CATAPANO: Yes.

MRS. CATAPANP: Mr. Fence did it, yeah.

MR. CATAPANO: Yeah.

MR. WEISS: Right thank you.

MR. LEVITON: Bob.

MR. GREGOWICZ: Just one question, what brought you to the zoning board? I mean what raised these issues after you put everything in that now you have to now come in to get the variances and everything that can clear it? What triggered it? Because you put everything in, you put the pool in, you put the fence in. You had issues before, but what caused you now to come before the board?

MR. CATAPANO: Well we're thinking about selling the house so we need to get all our ducks in a row. We don't have a buyer yet.

MR. GREGOWICZ: Right.

MR. CATAPANO: But we heard that things have changed and we figured we'd come in and take care of it.

MR. GREGOWICZ: Okay.

MR. CATAPANO: Before we even decide to sell.

MR. GREGOWICZ: Understood.

MR. LEVITON: Thank you Bob, Basil.

MR. MANTAGAS: Hi Mr. and Mrs. Catapano. You extended the driveway the same time you did the fence?

MR. CATAPANO: No.

MR. MANTAGAS: It was a separate time?

MR. CATAPANO: Yes.

MR. MANTAGAS: You had somebody, an asphalt company, do it for you?

MR. CATAPANO: Yes.

MR. MANTAGAS: I see you have brick on the sides of it too.

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MR. CATAPANO: Yes. It actually leads into the walkway to the fence

MR. CATAPANO: Right we just made the ---

MRS. CATAPANO: We can't put a car or anything ---

MR. CATAPANO: So instead of ---

MR. MANTAGAS: So it wasn't made for a car. It was just made for a walkway?

MR. CATAPANO: Oh yeah just to get into the backyard.

MR. MANTAGAS: That wide?

MR. CATAPANO: Because the gate's right ---

MRS. CATAPANO: Yeah.

MR. MANTAGAS: And in the shed you have electric? You have permits for the electrical and everything?

MR. CATAPANO: Yes.

MRS. CATAPANO: Yes.

MR. MANTAGAS: To code?

MR. CATAPANO: Yes.

MRS. CATAPANO: Yes.

MR. MANTAGAS: Thank you Mr. Chairman no more questions, thank you.

MR. LEVITON: Thank you Mr. Mantagas, Mr. DiTota?

MR. DITOTA: I have no questions.

MR. LEVITON: Thank you Rob. Okay at this time I'm going to go out to the public and ask if there's anyone in attendance who wants to ask a question or address the board that now would be the time. Yes ma'am come on up and tell us who you are, but first Janice is going to give you a microphone.

MS. MODULA: Can I just take this?

MR. LEVITON: Yeah you can do that.

MR. GLASS: If you could just please spell and state your name.

MS. MODULA: Sure it's Jennifer Modula 66 Alexandria Drive.

MS. MOENCH: Please spell your name.

MS. MODULA: Jennifer do you need me to spell that? Okay M-O-D-U-L-A.

MS. MOENCH: Thank you.

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MS. MODULA: Okay I'm here because I did receive a letter from the Catapanos and I'm just for my own record I bought my parent's house so I'm in the middle of construction. I've gone through, I didn't need zoning, but I've done construction and all of that. My question becomes on something such as my shed if I were to ever sell being that it was put in and permitted how many years ago. My parents have been in this house 37 years, does it become an issue when zoning was changed that now I would be screwed and have to move my shed as well or does that? I'm just saying because I feel like the fact that they got their CO and they were given I'm just confused as to why like the shed is an issue and like the fence as an issue? Right because I have, we've done things more than ten years ago as well.

MS. DEFALCO: I can't answer it because I don't have your survey in front of me.

MS. MODULA: Right.

MS. DEFALCO: I can't tell you if there is an issue or not an issue, but if you would like to stop by the Zoning office with the survey of the property I would be happy to answer any questions.

MS. MODULA: I'm not here to look to see about my issue. I'm here because I feel like if it was something that they've already gotten a CO for and approved, I'm just confused as to why it's an issue now.

MS. DEFALCO: Okay you can come to the office anytime and we can speak about it. This is really not the time and place for it if you have questions about this application?

MR. GLASS: They're just before the board because they require variance relief. To the extent there's additional questions I would contact the zoning office

MS. MODULA: I can tell you when they replaced their fence; they replaced it with a newer model of what was there previously.

MR. GLASS: The municipal land use law just requires, the New Jersey Statutory Schemes require that if you're requesting certain relief or in this case they indicated that they're thinking of selling and they know that there are issues with the property that are not in compliance, they have opted to come before the board to retroactive compliance whatever term you want to use.

MS. MODULA: So just for clarification if zoning regulations change as a homeowner, when you go to sell that could potentially require a variance?

MR. GLASS: It's not a proper question. This is only a question about this application so if there's a question about the general of zoning I would agree that seeing.

MS. MODULA: Okay.

MS. DEFALCO: Come see me.

1 MS. MODULA: I just don't think that I just feel like
2 if they were already granted permits and stuff for certain
3 things then it should just be able to. Listen I don't know all
4 the specifics.

5

6 MS. DEFALCO: Right have you been listening? They
7 were granted approval for one thing.

8

9 MS. MODULA: Correct.

10

11 MS. DEFALCO: And they did something else, that's
12 different.

13

14 MS. MODULA: And I'm just saying for instance the
15 fence right, it's changed. Right? You said three foot in the
16 front now based on their property.

17

18 MR. LEVITON: It's always been three feet. The front
19 yard setback changed from 50 to 60.

20

21 MS. MODULA: Right

22

23 MR. LEVITON: From 60 to 50.

24

25 MS. MODULA: Right but what I'm saying is I'm
26 confused of the fact that when they did it.

27

28 MR. LEVITON: They weren't granted approval at the
29 time. They would have had to come here to get approval and
30 they didn't. So it's not as if they were given approval and
31 then we're making them come in and jump through hoops. They
32 never received approval. You can't put up a six foot fence in
33 Manalapan Township without approval. You need three foot fence
34 and if you have one and then it's identified in every house
35 that gets sold in Manalapan Township now gets evaluated by the
36 zoning officer and they're going to like a construction permit
37 they're going to have to bring everything back into compliance
38 or come here and get relief.

39

40 MS. MODULA: Okay.

41

42 MR. LEVITON: How long have you been here?

43

44 MS. MODULA: My entire life.

45

46 MR. LEVITON: And how long has it been since you
47 bought your mom's house and you've been redoing it?

48

49 MS. MODULA: Two years, but prior to that I lived in
50 Yorktowne and prior to that I lived in Knob Hill and prior to
51 that I lived in my parent's house.

52

53 MS. DEFALCO: So you bought your parents' house in
54 2020?

55

56 MS. MODULA: Yes.

57

58 MS. DEFALCO: Earlier in the year?

59

60 MS. MODULA: Yes.

61

62 MS. DEFALCO: Then you should have gone through
63 zoning.

64

1 MR. LEVITON: Or your mom and dad did.

2
3 MS. DEFALCO: Yeah your parents should have went
4 through the ZCCO process.

5
6 MS. MODULA: It was more of a change of a deed.

7
8 MS. DEFALCO: You're a change of occupancy so you
9 should've come to zoning.

10
11 MS. MODULA: When in 2020?

12
13 MS. DEFALCO: This came in effect in February so
14 doesn't matter.

15
16 MS. MODULA: This deed came in February 2020

17
18 MRS. CATAPANO: Well that I know because when I
19 called the house I saw --- and I did go through all of that.

20
21 MS. DEFALCO: You had to have had a ZCCO

22
23 MS. MODULA: I didn't. There was no money.

24
25 MS. DEFALCO: It doesn't matter it's a change of
26 occupancy.

27
28 MS. MODULA: She's still there. They're still there.
29 Yeah they're still there, yeah. My father had passed away, but
30 my mom's still there.

31
32 MS. DEFALCO: Okay anyway. You can bring a survey
33 down they can take a look if you'd like.

34
35 MS. MODULA: Okay thank you.

36
37 MR. LEVITON: Thank you Ms. Modula. Okay is there
38 anyone else from the public who'd like to address the board or
39 ask a question of the applicant? Seeing none I'll close
40 public. Let's go to our attorney Mr. Glass.

41
42 MR. GLASS: Thank you so I did hear there was some
43 discussion about the hardship and I think Chair you said it
44 soundly that a hardship has to run with the land and it is not
45 for either self-created situations and/or mistake so in this
46 case you'd be looking at it under the traditional, the C2
47 benefits versus the burden criteria, and again as the Chair
48 indicated the applicant has to demonstrate that the purposes
49 of the municipal land use law would be advanced by deviating
50 from the zoning ordinance and that the benefits of deviating
51 there from would substantially outweigh any detriment. So I
52 would suggest maybe a little bit more testimony as to the lack
53 of detriment to the zoning ordinance or a substantial lack of
54 detriment at least so the record is clear.

55
56 MR. LEVITON: So I can easily do that. The positive
57 criteria I'm going to be a little bit more challenged on, but
58 I'll ask you do you see any substantial detriment to the
59 neighborhood at large from the improvements that you've made?

60
61 MR. CATAPANO: Oh absolutely not.

62
63 MR. LEVITON: Okay so we're covered there Mr. Glass.

1 Can someone help me? I'm at a loss here. I don't know which
2 purpose of the MLUL to hang a hat on here.

3

4 MR. WEISS: Look if I can try. With regard to the
5 fence, what type of fence was there previously?

6

7 MR. CATAPANO: It was a wooden fence.

8

9 MR. WEISS: It was a wooden fence. Was it in any
10 state of disrepair?

11

12 MR. CATAPANO: Oh it was horrible.

13

14 MR. WEISS: Okay. Would people or children be unable
15 to get through it at any point, to get into the pool?

16

17 MRS. CATAPANO: Oh yeah they could've just pushed on
18 it.

19

20 MR. WEISS: Okay and the current fence that you put
21 in now, its more secure than the prior fence?

22

23 MRS. CATAPANO: Oh yeah.

24

25 MR. WEISS: And it's more what's the word I'm looking
26 for closed off than the one that was in disrepair?

27

28 MR. CATAPANO: Right, yes.

29

30 MRS. CATAPANO: Yes.

31

32 MR. WEISS: Okay thank you.

33

34 MR. LEVITON: Outstanding.

35

36 MRS. CATAPANO: We put the fence, the white fence,
37 I'm sorry I had surgery today.

38

39 MR. WEISS: No problem.

40

41 MRS. CATAPANO: I'm sorry. We put the white fence
42 that we put exactly where the wood fence was.

43

44 MR. WEISS: Okay.

45

46 MRS. CATAPANO: We did the same. We followed the
47 line.

48

49 MR. LEVITON: And the vinyl is more attractive than
50 the wood?

51

52 MR. CATAPANO: Oh yes.

53

54 MRS. CATAPANO: Oh yeah it looks really nice.

55

56 MR. LEVITON: Okay. No substantial detriment and the
57 fence is more secure to protect their pool and their interests
58 and it's more attractive than the wood that it replaced.

59

60

61 MR. GLASS: Yeah and I guess as was pointed out the
62 property is again it's not a hardship per se, but the property
63 is more narrow than the average property.

64

1 MR. LEVITON: Like a pie shape almost, to the back.

2

3 MR. CATAPANO: Yes like a trapezoid.

4

5 MR. LEVITON: Trapezoid, yeah.

6

7 MR. GLASS: And then I think to the extent I don't
8 believe it was in the record, but I don't believe there's been
9 any complaints about what is already there so.

10

11 MR. LEVITON: Yeah okay, alright good then let's
12 anything else Adam?

13

14 MR. WEISS: I was going to make a motion.

15

16 MR. LEVITON: Oh please do. Adam is going to move.

17

18 MR. WEISS: I make a motion to approve the
19 application as submitted subject to any conditions that were
20 made based on the record. I don't believe we did place any.

21

22 MR. LEVITON: No.

23

24 MR. WEISS: So then it's just a motion to approve the
25 application as submitted.

26

27 MR. LEVITON: And will someone second it?

28

29 MR. ROSENTHAL: I'll second.

30

31 MR. LEVITON: Thank you Mr. Rosenthal.

32

33 MR. ROSENTHAL: I'm not on video anymore I have to
34 say my name.

35

36 MR. LEVITON: Right.

37

38 **ROLL CALL:**

39

40 MS. MOENCH: Mr. Gregowicz?

41

42 MR. GREGOWICZ: Yes.

43

44 MS. MOENCH: Mr. DiTota?

45

46 MR. DITOTA: Yes.

47

48 MS. MOENCH: Mr. Schertz?

49

50 MR. SCHERTZ: Yes.

51

52 MS. MOENCH: Mr. Mantagas?

53

54 MR. MANTAGAS: Yes.

55

56 MS. MOENCH: Chair Leviton?

57

58 MR. LEVITON: Congratulations and at our next regular
59 meeting.

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61

62

63 MS. MOENCH: I'm just going to call the roll again,
64 sorry. Due to an error.

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ROLL CALL:

MS. MOENCH: Mr. Gregowicz?

MR. GREGOWICZ: Yes.

MS. MOENCH: Mr. DiTota?

MR. DITOTA: Yes.

MS. MOENCH: Mr. Rosenthal?

MR. ROSENTHAL: Yes.

MS. MOENCH: Mr. Schertz?

MR. SCHERTZ: Yes.

MS. MOENCH: Mr. Weiss?

MR. WEISS: Yes.

MS. MOENCH: Mr. Mantagas?

MR. MANTAGAS: Yes.

MS. MOENCH: Chair Leviton?

MR. LEVITON: Yes. Okay so on the 21st your application will be memorialized and you'll be good to go. You won't need to be here at that time.

MR. CATAPANO: Okay.

MR. LEVITON: Congratulations to you and good luck with the sale of your home.

MRS. CATAPANO: Thank you. Thank you very much.

MR. CATAPANO: Thank you.

MR. LEVITON: You're welcome.

MR. MANTAGAS: Good luck.

MRS. CATAPANO: Thank you guys. Thanks Nancy.

MR. LEVITON: Okay Mr. Spencer you're our next applicant and that I'm going to call your case its application number 2226. How are you sir?

MR. SPENCER: Hello.

MR. LEVITON: Hello.

MR. SPENCER: How are you?

MR. LEVITON: I'm well thanks.

MR. SPENCER: Good.

MR. LEVITON: Mr. Spencer our attorney Mr. Glass is going to swear you in and then you'll begin.

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MR. GLASS: If you could please first please spell and state your name.

MR. SPENCER: Gary Spencer.

MR. GLASS: Spell your last name please.

MR. SPENCER: S-P-E-N-C-E-R.

MR. GLASS: And please raise your right hand and repeat after me. Do you swear or affirm that the testimony you're about to provide is the truth, the whole truth, and nothing but the truth?

MR. SPENCER: Yes.

MR. LEVITON: Mr. Spencer we're here about your fence. It's also six feet. Tell the board about it and explain to them the nature of your home and its proximity to Franklin Lane and Wickatunk.

MR. SPENCER: Correct. Do they know where this is?

MR. LEVITON: They do. They've seen it, but just let, we're going to put it on the record.

MR. SPENCER: It's kind of like ---

MR. LEVITON: Yeah we're just going to put it on the record sir.

MR. SPENCER: I'd explain where it is, it's okay.

MR. LEVITON: Okay.

MR. SPENCER: No, no problem.

MR. LEVITON: Okay thanks.

MR. SPENCER: So they know?

MR. LEVITON: They do.

MR. SPENCER: Okay.

MR. LEVITON: Okay.

MR. SPENCER: Alright so you want to tell me. What I'm trying to do is get a variance for the fence, okay and the front porch, okay. The fence is the main issue right now. It's because of the setback that's what I'm trying to get a variance for. I think it's 75 foot setback because I live on a corner it's I got two roads so. I was told I have two front yards even though I never thought I did, but anyway so my reasons for the variance would be on D or C, a hardship which you had stated because of the irregularity shape of the road because it's on a curve but the main thing is also that it's the ramp way off of Route 9 coming up to Wickatunk. So it's a very busy road, heavily travelled, lot of time traffic is backed up because people make left-hand turns when they're not supposed. It's illegal if you know the intersection its bad, but whatever. So it's that corner lot there that's the issue. It's a corner lot. The other thing is that aesthetically what

1 I put up was a white vinyl fence, okay replacing a pre-
2 existing fence that was there. It was chain link fence, but
3 we'll get into that if you want to see the surveys that I had
4 done, but aesthetically I think it looks much better and more
5 appealing to the town from what was there and from what is all
6 the fences that are behind me which are wooden fences. A lot
7 of them overgrown, property not taken care of on the township
8 side of the fence and a lot of the wooden fences have
9 deteriorated. Some of them have been replaced, some have not;
10 it's just a mess. I think technically aesthetically mine looks
11 the best, but it's a matter of opinion.

12

13 MR. LEVITON: Can you tell us about the porch?

14

15 MR. SPENCER: Okay the porch was done back in I want
16 to say 2006. Okay and I got the permits and I had permits for
17 electrical and construction. They were all approved and
18 whatever. Didn't know anything about the zoning at the time
19 until this came up when I brought a survey, an old survey from
20 1984, to the board and it was brought to my attention so I had
21 a whole new survey done and we see it's about three, maybe
22 three and a half, feet over from a 75 foot setback. It's a
23 very pretty porch I did. Again the hardship there would be
24 aesthetically it looks much nicer than a cement slab that was
25 there. I saw in the pictures I don't know if do you have
26 access to those pictures?

27

28 MR. LEVITON: We do. We've seen them.

29

30 MR. SPENCER: Okay, okay.

31

32 MR. LEVITON: We have them all.

33

34 MR. SPENCER: When I saw the pictures I thought they
35 were cropped, but its funny I'm not real big tech savvy, but
36 what I realized was when because I took some of them
37 horizontal, some vertical, what I realized was you know what
38 it took them vertical instead of seeing a whole porch or
39 whatever, but you can see from the sides. You can see there's
40 three pictures of the porch. The rest is all of the
41 properties, everything else for the fence, but that was I
42 never had a zoning variance for the porch. I just have the
43 construction and I have electrical permits that were approved
44 back in 2006 and 7.

45

46 MR. LEVITON: Nancy what's the issue with the porch?

47

48 MS. DEFALCO: The porch is minimal, but the setback
49 is 75 and he's approximately 71 so again we're here for the
50 fence, but we might as well address the porch as well.

51

52 MR. LEVITON: Okay. He doesn't identify in the denial
53 so I just want to get it on the record.

54

55 MR. SPENCER: Go for it.

56

57 MR. LEVITON: And Mr. Glass is going to give you a C2
58 variance for that because you've indicated that it improves
59 the aesthetics in the neighborhood and I have nothing further.
60 There's no one here. I'm going to open and close public and
61 then we'll go out to the board, Mr. DiTota.

62

63 MR. DITOTA: I have no questions.

64

1 MR. LEVITON: And Mr. Mantagas?

2
3 MR. MANTAGAS: Mr. Spencer, are you going to change
4 that fence you said? The wood fence, are you going to?

5
6 MR. SPENCER: No my fence, what was there before I
7 moved there in 1984 on the survey

8
9 MR. MANTAGAS: Is that the picture of the wood fence?

10
11 MR. SPENCER: No I'll show you. There is no picture
12 of the wood fence. You're looking at the pictures now?

13
14 MR. MANTAGAS: Yeah.

15
16 MR. SPENCER: Tell me what number picture you are
17 looking at.

18
19 MR. MANTAGAS: Number seven.

20
21 MR. SPENCER: Seven, okay.

22
23 MR. SPENCER: No you know what that is? That is if
24 you came down the ramp and went which is Franklin Lane and
25 then went actually on Franklin Lane that is a wooden fence
26 that I was showing you how, that is a lot along Franklin Lane.

27
28 MR. MANTAGAS: Oh okay.

29
30 MR. SPENCER: And how it's overgrown. It was just to
31 show you that mine doesn't look like that.

32
33 MR. MANTAGAS: I see thank you.

34
35 MR. SPENCER: I took a bunch a pictures because I
36 thought hey I might as well show bad with good you know?

37
38 MR. MANTAGAS: No more questions.

39
40 MS. DEFALCO: Mr. Spencer is the fence already
41 existing, the new vinyl fence?

42
43 MR. SPENCER: Yes.

44
45 MS. DEFALCO: Okay.

46
47 MR. LEVITON: Picture 17 for the record.

48
49 MR. SPENCER: Seventeen is along the Franklin Lane,
50 yes and the other you know it's funny because the front of it
51 which is obviously behind the setback goes towards the side of
52 the house or whatever.

53
54 MR. LEVITON: It's ten and eleven.

55
56 MR. SPENCER: It got cropped up.

57
58 MR. LEVITON: Ten and eleven.

59
60 MS. DEFALCO: So Mr. Spencer provided two surveys.

61
62 MR. SPENCER: No, that's not it.

63
64 MR. DEFALCO: Mr. Spencer.

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MR. SPENCER: Sorry.

MS. DEFALCO: 1984.

MR. SPENCER: I could show you.

MS. DEFALCO: Wait a minute.

MR. SPENCER: Okay I'm sorry.

MS. DEFALCO: Shows the fence existed in 1984, a chain link correct in '84?

MR. SPENCER: 1984.

MS. DEFALCO: Chain link.

MR. SPENCER: It was put in probably in the '70s, we don't know.

MS. DEFALCO: And you replaced that chain link.

MR. SPENCER: Yes which was fallen down, deteriorated, broken, and yes.

MS. DEFALCO: And you're going to move the fence in, right?

MR. SPENCER: Well the other issue is again if you I don't know if anybody has a copy of the survey that was done in 1984, okay. I just wanted this if you see the chain link fence that comes from the side of the house out you can see that it looks like it's 6.8 over the boundary line. Now why this was allowed? I have no idea, but you know I got stuck holding the ball so I got to fix it. So when I decided to move my fence in and take that down I had them go eight foot sections all the way out and then back and it was actually about three feet short of this here. So when I was told that that wouldn't work because we don't know if you're over or not with the boundary I had a new survey done. So you would see, do you have that? Everybody have the new survey?

MS. DEFALCO: Yes.

MR. SPENCER: Okay so the new survey shows that it's now only three feet over the boundary line and as it goes to the back of the yard corner, it's actually 2.3 feet inside the boundary line. So what I'm looking to do in addition to the variance is I know and this is why I wish I had known this first because I would have saved time and money. Alright not having to move the fence again all these sections, but I would like to move the fence in off the boundary line and kind of straight back to the corner okay so.

MS. DEFALCO: So what does the four and the eight represent on the new survey? I get the four feet because you're going to move it where it's 3.8 off your property, but what's the eight feet in the back? Are you going to go eight feet?

MR. SPENCER: I think what happened was I was asked how much do you want to move it in okay? Is that what you're

1 talking about? Are you talking about something on the survey
2 or something that was handed?

3

4 MS. DEFALCO: You wrote handwritten eight.

5

6 MR. SPENCER: Oh okay I didn't write it, but it's
7 okay. It's okay.

8

9 MS. DEFALCO: Janice what does it mean?

10

11 MR. SPENCER: I could tell you what it means. Its
12 okay I'm not going to say who did it. I can say I did it, it's
13 alright. What happened was I said I moved it in eight feet and
14 eight feet and then I thought eight feet in would be one
15 section so it would still look like eight foot sections up at
16 the front and then I was going to do the same to the back.
17 However, if you could see on the picture number one that this
18 is actually the back corner of my fence and where the old
19 chain link fence used to abut right up to the corner of the
20 wooden fence behind my property. So being that we made it a
21 little bit straighter it is now just over two feet, two feet
22 one inches, inside the corner and it's off the property line.
23 So I was hoping to maybe leave that corner there and just move
24 the foot in eight feet and leave the back there and then they
25 would just make it more of an angle, but it would still be off
26 the property line.

27

28 MS. DEFALCO: It still wouldn't be eight feet. You
29 want to move it in?

30

31 MR. SPENCER: I want to leave the back corner as it
32 is.

33

34 MS. DEFALCO: And then you want to connect the front.

35

36 MR. SPENCER: The front fence.

37

38 MR. SPENCER: Take one whole section in the front out
39 and then run the eleven sections straight back to the corner
40 that's there. See and here's the thing I thought again
41 aesthetically that it would look all those fences as you can
42 see here like in this. Here's all the wooden fences that come
43 up along on picture number two that run along the curb, the
44 Franklin Lane ramp way. These are all the fences there and
45 mine starts right about here. So since they're all not in a
46 row and the chain link used to be in a row I thought,
47 aesthetically, it wouldn't look good if I'm only in two now,
48 but if I moved it in eight more I'd be now ten feet in. I
49 don't think that would look good for the township you follow
50 me?

51

52 MR. LEVITON: I do.

53

54 MS. DEFALCO: So I want you to put on the record you
55 want relief for the front yard. You want to be 2.3 feet from
56 Franklin Lane?

57

58 MR. SPENCER: For the front?

59

60 MS. DEFALCO: For the front, yes of Franklin.

61

62 MR. SPENCER: It's probably going to be more than
63 that because an eight foot section if I took I'm guessing
64 that's 3.8 ---

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MS. DEFALCO: You said you wanted to keep that back corner?

MR. SPENCER: Yeah.

MS. DEFALCO: That's 2.3 feet away from Franklin Lane.

MR. SPENCER: Oh yeah I want to keep that one corner at the back. You're going from the front, okay I'm sorry.

MS. DEFALCO: No I'm going off the side.

MR. SPENCER: Yeah.

MS. DEFALCO: Towards the front.

MR. SPENCER: Yeah.

MS. DEFALCO: Do you want to keep that at 2.3?

MR. SPENCER: Correct.

MS. DEFALCO: Now you're going to bring the fence onto your property, off the right of way when you meet the front fence, how far is the fence going to be from the property line?

MR. SPENCER: It will be about, if that means 3.8 inches, it would technically be 4.4 inches.

MS. DEFALCO: So you're going to need four 4.5 feet from ---

MR. SPENCER: Yeah more.

MS. DELFALCO: From the one that goes across Wickatunk?

MR. SPENCER: Yeah.

MS. DEFALCO: Four and a half feet and two feet, three inches on the back.

MR. SPENCER: On the back and because again I want to be inside the property line, obviously.

MS. DEFALCO: Yeah because it kind of curves.

MR. SPENCER: That's right. I know and since its state property I got to be off there, but what I did was I took a straight line from that again I don't know if every one of those dots is exactly eight feet. I don't know because I didn't have the little ruler that you use.

MR. SPENCER: Well you have a little ruler that measures every foot.

MS. DEFALCO: Got it, I see

MR. SPENCER: When I just put from that back corner to the front I am just inside. I took anything straight and it

1 stays just inside that line. I just wanted to make sure that
2 was okay because I don't want to have to move this fence a
3 third time.

4

5 MS. DEFALCO: I don't know if it's okay, but you have
6 to let the board know what you are proposing.

7

8 MR. SPENCER: That's what I'm proposing right now. If
9 I move them both in eight feet I know I'd be in, but I think
10 the other way would actually look better and aesthetically
11 look better.

12

13 MR. LEVITON: I think I can't speak for the board,
14 but I believe they're inclined to give you whatever you ask
15 for so why don't you ask for relief that's more generous than
16 you're going to need and Mr. Glass will write it into ---

17

18 MR. SPENCER: I'm going to ask for to move the front
19 of the northeast part of the fence towards Wickatunk in 4.4
20 feet, okay and keep the back post the same.

21

22 MS. DEFALCO: Okay you moved it in 4.4 you're only
23 going to be right on the property line.

24

25 MR. SPENCER: I'm sorry. Well I'm moving it in eight
26 feet. No I'm moving the front in eight feet which will be 4.4
27 off the line.

28

29 MR. LEVITON: Keep the inside 4.4 feet.

30

31 MR. SPENCER: Right keep it inside the line 4.4.

32

33 MS. DEFALCO: Okay you're request 4.4.

34

35 MR. SPENCER: From the property line. So I'm
36 requesting to move it in eight feet total from where it is
37 now.

38

39 MR. LEVITON: He doesn't need our permission to move
40 it in. Why is he asking?

41

42 MS. DEFALCO: It's over the line --- right now.

43

44 MR. LEVITON: Who's compelling him to do that Nancy?
45 I didn't read about it in the denial.

46

47 MS. DEFALCO: What didn't you read?

48

49 MR. WEISS: The height was the issue.

50

51 MR. LEVITON: The height was the issue.

52

53 MR. WEISS: Six feet that's the issue.

54

55 MR. LEVITON: But that's news to me, because I don't
56 think this board is compelling him to move it, are we?

57

58 MS. DEFALCO: Yes.

59

60 MR. LEVITON: We are.

61

62 MS. DEFALCO: He has to go off the right-of-way. Now
63 if the board wants to grant the variance at 4.4 and 2.3 that's

1 up to the board, but he definitely has to go off the right-of-
2 way.

3
4 MS. MOENCH: The fence has to move off the right-of-
5 way no matter what.

6
7 MS. DEFALCO: No matter what.

8
9 MS. MOENCH: So we figured that we go for the
10 variance and see what the board says before.

11
12 MR. LEVITON: I understand. Mr. Glass can you define
13 right-of-way for the board members who may or may not know
14 what it means?

15
16 MS. DEFALCO: Not your property.

17
18 MR. GLASS: In certain, permissive use, but I'll use
19 permissive very generally to use a portion of property that is
20 not yours. However the way the zoning you would need something
21 either more affirmative, something if there was a deed
22 recorded giving him the right to put the fence on there. In
23 this case the fence happens to be in the right-of-way more so
24 than there's anything officially giving expressed permission
25 to be there. So if he's going to build a fence it has to be
26 done on his property and out of what is not his property. The
27 same way if someone was building, if someone turns up that
28 their fence is three feet onto someone else's property as in
29 yours, mine, or anyone else here just like that.

30
31 MR. LEVITON: And does it typically happen with
32 mailboxes where they're too far in ---

33
34 MS. DEFALCO: That's the only exception to that.

35
36 MR. LEVITON: The mailbox is an exception?

37
38 MS. DEFALCO: Yes.

39
40 MR. LEVITON: It's allowed to be in the right-of-way?
41 But what do you call the bottom part of the driveway? The
42 apron's in the right-of-way correct? It belongs to not the
43 homeowner? Okay.

44
45 MR. ROSENTHAL: Years ago we had a guy wanted to
46 build a tennis court with half of it on his neighbor's
47 property.

48
49 MR. SCHERTZ: I have a question.

50
51 MR. LEVITON: I remember, yes.

52
53 MR. SCHERTZ: How far in does the fence have to be
54 from the right-of-way by law?

55
56 MS. DEFALCO: So we go by property line and for a
57 fence that's six feet in height you would have to be 75 feet.
58 So where you see that dashed line.

59
60 MR. SPENCER: Yeah that's where the fence would have
61 to be.

62
63 MS. DEFALCO: That's where the fence would have to be
64 at six feet.

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MR. SCHERTZ: Okay.

MR. LEVITON: And have you hammered out the details with the survey and for memorialization?

MR. GLASS: That's what I think we're trying to clarify right now.

MS. DEFALCO: Yeah I just want to clarify and also I apologize I may not have updated my denial. What is that? The fence was pre-existing? The wood shed, the wood shed is it still existing?

MR. SPENCER: The wood shed is still existing been there for about 35 years.

MS. DEFALCO: Okay you'll need a variance for that and if the board grants the variance you'll need approval from WMUA

MR. SPENCER: WMUA?

MS. DEFALCO: Yes.

MR. SPENCER: I spoke to WMUA. I spoke to Annie Rafferty.

MS. DEFALCO: Rafferty?

MR. SPENCER: Yeah and she was going to get back to me because she was presenting to the supervisor. They said they tried for ten days.

MS. DEFALCO: Okay.

MR. SPENCER: And I didn't ask her eleven days ago so I haven't heard. I was hoping I would have heard, but not yet so. If they say it's okay the problem is that wood shed as Janice measured is 10 by 12 square feet which would then have to be in ten from the rear and fifteen feet from the side. I know according to the thing unless it's grandfathered in there, but it's not. Even if they did allow it would you have to have a variance?

MS. DEFALCO: Yes that's what it is

MR. SPENCER: To leave it?

MS. DEFALCO: To leave it.

MR. SPENCER: Otherwise what I would do is I would remove it.

MS. DEFALCO: Okay so if the board were to grant the variance for the wood shed and WMUA says no, then you'll move it to a conforming location.

MR. SPENCER: Or take it down?

MS. DEFALCO: Or take it down.

MR. SPENCER: Or demolish it.

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MR. SPENCER: A hundred percent.

MS. DEFALCO: Okay so either it will be 15 and 15.

MR. SPENCER 15 and 10.

MS. DEFALCO: Whatever you need to be all you have to get.

MR. SPENCER: I got one question so I understand this. If WMUA says it's okay on that easement.

MS. DEFALCO: And the board grants the variance then you don't have to do anything.

MR. SPENCER: I can leave it alone?

MS. DEFALCO: Yes.

MR. SPENCER: So to get that variance I would have to go through the whole procedure like I did with this?

MS. DEFALCO: No, no we're talking about now that's why.

MR. SPENCER: Oh super.

MR. LEVITON: But we need ---

MR. SPENCER: Oh man that would be great.

MR. LEVITON: We'd like it on the record just so we understand.

MR. SPENCER: Okay.

MR. LEVITON: I'm just a little unclear. I'm first hearing about it now. Where is the shed now and how much is it not compliant?

MS. DEFALCO: It shows on the new survey not the old one.

MR. SPENCER: Correct. That's because I built it.

MR. SPENCER: After I lived there.

MS. DEFALCO: It says that it's 3.39 from the rear property line whereas ten is required.

MR. SPENCER: Right.

MS. DEFALCO: And he is a little shy let's say thirteen feet.

MR. SPENCER: On the left side.

MR. LEVITON: Where fifteen feet is required.

MS. DEFALCO: Fifteen is required.

1 MR. LEVITON: Okay. So we will likely, favorably
2 grant you a variance for that.

3
4 MR. SPENCER: And the WMUA goes.

5
6 MR. LEVITON: And then that's up to WMUA and if they
7 say no you've already agreed to take it down. Mr. Glass will
8 have that as a condition of the variance relief.

9
10 MR. SPENCER: So if I hear within the next two weeks?

11
12 MS. DEFALCO: no

13
14 MR. SPENCER: Okay

15
16 MR. LEVITON: Whenever you hear.

17
18 MR. SPENCER: Oh for sure.

19
20 MR. LEVITON: That's all.

21
22 MR. SPENCER: Not a problem.

23
24 MR. LEVITON: Okay.

25
26 MS. DEFALCO: So the end of the driveway.

27
28 MR. SPENCER: What?

29
30 MS. DEFALCO: Four and a half feet.

31
32 MR. LEVITON: It may not have been him Nancy right?
33 He's been there thirty-eight years, but there could have been
34 another owner.

35
36 MS. DEFALCO: You look at the older survey you'll see
37 there was a bump out and it appears that it was extended.

38
39 MR. LEVITON: It does.

40
41
42 MR. SPENCER: You're talking about my flower box
43 thing?

44
45 MS. DEFALCO: No the driveway.

46
47 MR. SPENCER: Oh okay alright.

48
49 MR. WEISS: Where it says wood ties.

50
51 MR. SPENCER: Yup.

52
53 MS. DEFALCO: If you look at your older survey you
54 have like a little bump out. It looks like its all the way
55 down to be a wider driveway.

56
57 MR. SPENCER: Oh I see what you're saying. Probably
58 because I had kids in there they parked there, but yeah that's
59 a problem. Yeah obviously that's how it is one hundred percent
60 so it is now. So if I need a variance for that, let's do it.

61
62 MS. DEFALCO: Now's the time.

63
64 MR. SPENCER: Absolutely let's do it.

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MS. DEFALCO: We don't want you back getting another.

MR. SPENCER: I agree and I would prefer not to come back and bother you with this step because again a lot of these thing I don't know about. Again that was a long time ago. It's almost time for a new driveway.

MR. DITOTA: Mr. Chairman can I ask a question?

MR. LEVITON: Absolutely Mr. DiTota.

MR. DITOTA: Because from the time that you asked me if I had any questions to now I became very much confused. Maybe Nancy you can help me with this. The new survey I'm on alright it shows the dotted line where he wants to put the fence now right?

MR. SPENCER: No.

MS. DEFALCO: That shows that dotted line that's in the right-of-way that's where the fence exists now.

MR. DITOTA: Okay so it's supposed to be where the other dotted line where it says 75 setback line.

MS. DEFALCO: That's where it's supposed to be legally.

MR. DITOTA: So he's essentially asking for 75 foot?

MR. SPENCER: No, no can I show?

MS. DEFALCO: Yes no he's right. You are asking for 75 feet. He replaced what was there so he's confused about that, but yes he is.

MR. DITOTA: But the variance is 75 feet?

MS. DEFALCO: Yes.

MR. DITOTA: That's what I want to understand because before I didn't.

MR. SPENCER: Yeah I don't want to put the fence 75 feet in.

MR. SPENCER: I understand that that's why I'm trying to get the variance for the setback.

MR. LEVITON: It's the fault of that darn curve. It's the darn curve. It's the curve that's throwing everything here. That's why you're in the right-of-way, it's the curve.

MR. SPENCER: You know what's funny.

MR. LEVITON: And it wasn't your fault. It was the previous people before

MR. SPENCER: Because you can see the whole thing was over before, but you know what I thought was funny. When you look at the way it goes down with this whole curve, okay if you measure the fence that's there now it's 19 feet to the

1 curb. Okay if I come down here for the rest of the curb from
2 that corner of that fence down here it's 19 feet. But
3 apparently I don't know why you would think it wouldn't start
4 to get wider until up here, but if they're telling me in the
5 survey, they do their jobs, that it's three feet over I
6 believe them. I have no idea.

7

8 MR. LEVITON: Absolutely.

9

10 MR. SPENCER: I just know that what was there was not
11 good and I would've done this probably a year and a half ago.
12 I would've been in the same boat, but the prices went up. The
13 supply was hard to get and I wanted to go with a dark walnut
14 to match the deck and the price was ridiculous. That's how it
15 was so I went white.

16

17 MR. LEVITON: Rob.

18

19 MR. DITOTA: One more question. In order to get off
20 the right-of-way we're saying that he has to come in 3.8 feet?
21 Just to be on his property correct?

22

23 MS. DEFALCO: I'm sorry.

24

25 MR. DITOTA: In order for him to get off the right-
26 of-way he has to be 3.8 feet in on his property and he's still
27 in the setback.

28

29 MS. DEFALCO: Still have to give him the variance for
30 the setback.

31

32 MR. DITOTA: Alright.

33

34 MS. DEFALCO: But.

35

36 MR. DITOTA: I better understand that now.

37

38 MS. DEFALCO: It appears he's going to stay at the
39 2.3 in the back corner and by the time he brings in the front
40 because of the curve of the plan he'll be 4.4 there whereas 75
41 is required.

42

43 MR. LEVITON: I'm thrilled that you asked. ----
44 Nobody should be confused up here when you don't know you ask.
45 I love it.

46

47 MR. DITOTA: Yeah I thought I knew what I was doing.
48 I thought I knew before, but then a lot of transpired.

49

50 MR. LEVITON: Okay good stuff. Basil how about you?

51

52 MR. MANTAGAS: No more questions I understand.

53

54 MR. LEVITON: Bob?

55

56 MR. GREGOWICZ: No questions.

57

58 MR. LEVITON: David?

59

60 MR. SCHERTZ: No more.

61

62 MR. LEVITON: Terry?

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64 MR. ROSENTHAL: No more.

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MR. LEVITON: Joshua?

MR. SHALIKAR: No questions.

MR. LEVITON: We're good up here. There's nobody in attendance so there's nothing for public. I'm opening and closing it. Dustin have you got the numbers hammered out?

MR. GLASS: We have. I think we are squared away here. So I guess in some it appeared the applicant is looking for what I have is five variances. I'll start I guess in order. For the fence its 2.3 feet from the rear yard where 75 feet is required street side sorry, 4.4 feet from the street side where 75 feet is required so those are the two for the fence. Then moving to the driveway as was stated ten feet is required from the side yard whereas this 4.5 feet and then the shed has indicated, the shed is currently 3.39 feet from the street side or rear sorry and then thirteen feet from the side yard. Ten feet is required for the rear fifteen feet for the side yard and as was stated and the applicant has agreed if the variances for that. Oh yes the porch thank you. So if the variances are granted for the shed it would be conditional upon approval from the WMUA and if that is not granted the applicant will either bring the shed into conformance or remove it and then lastly we have the front porch where the setback requirement is 75 feet and the porch would be 71 feet. So it's actually six variances as Nancy helped me out there.

MR. LEVITON: And just for the record the Western Monmouth Utilities Association has to grant approval for the shed's presence because there is?

MS. DEFALCO: An easement.

MR. LEVITON: An easement that it sits on.

MS. DEFALCO: Yes.

MR. GLASS: Correct.

MR. LEVITON: Okay.

MR. SPENCER: Sewer easement.

MR. LEVITON: Sewer easement.

MR. SPENCER: How did you get six on there? I got five. Where'd you get the sixth from?

MR. GLASS: You have the driveway.

MR. SPENCER: Yeah.

MR. GLASS: The front porch.

MR. SPENCER: Yeah.

MR. GLASS: Two for the fence.

MR. SPENCER: Yeah.

MR. GLASS: And then also two for the shed.

1 MR. SPENCER: Oh two for the shed? Okay I got you. --
2 -

3
4 MR. GLASS: And then I guess I can touch on the
5 criteria because I guess we have a few. I would agree --- the
6 property is unique in shape obviously so that uniqueness would
7 drive some of the variances potentially for the fence. However
8 as was indicated the benefits versus the burden analysis would
9 drive many of the other variances so I think there is
10 testimony as to both. I think the applicant has, you could
11 analyze them under either. Again since I were to say more of
12 them are benefits versus burdens analyzing it as a whole if
13 that makes some sense, but again there is testimony as to the
14 hardship for the fence aspect.

15
16 MR. LEVITON: His legal acumen off the charts, but
17 okay so for everyone else he's going to get a C2 variance for
18 everything. That's what it's going to come down and it won't
19 make a bit of difference to the homeowner. Okay will someone
20 make a motion please?

21
22 MR. WEISS: I'll make a motion to approve the
23 application as submitted and as amended tonight subject to the
24 conditions that Mr. Glass stated.

25
26 MR. LEVITON: And will someone second that?

27
28 MR. DITOTA: I'll second that.

29
30 MR. LEVITON: Thank you Robert.

31
32 MS. MOENCH: Who seconded it?

33
34 MR. LEVITON: Mr. DiTota.

35
36 **ROLL CALL:**

37
38 MS. MOENCH: Mr. Gregowicz?

39
40 MR. GREGOWICZ: Yes.

41
42 MS. MOENCH: Mr. DiTota?

43
44 MR. DITOTA: Yes.

45
46 MS. MOENCH: Mr. Rosenthal?

47
48 MR. ROSENTHAL: Yes.

49
50 MS. MOENCH: Mr. Schertz?

51
52 MR. SCHERTZ: Yes.

53
54 MS. MOENCH: Mr. Weiss?

55
56 MR. WEISS: Yes.

57
58 MS. MOENCH: Mr. Mantagas?

59
60 MR. MANTAGAS: Yes.

61
62 MS. MOENCH: Chair Leviton?

63

1 MR. LEVITON: Yes. Mr. Spencer congratulations. We're
2 going to adopt a formal resolution at a subsequent meeting and
3 that will be mailed to you by Janice. She'll also answer any
4 questions you have. She'll take good care of you like she
5 always does. She always does. She's the best.

6
7 MR. SPENCER: I know.

8
9 MR. LEVITON: We're so lucky to have her you have no
10 idea.

11
12 MR. SPENCER: I tell her that she thinks I'm a pain
13 in the ass.

14
15 MR. LEVITON: No she doesn't.

16
17 MR. SPENCER: I try to be. She doesn't want to see me
18 anymore.

19
20 MR. LEVITON: No Mr. Spencer you're wrong. I never
21 want to see you for that either.

22
23 MR. SPENCER: I agree. I don't ever want to come here
24 for that anymore.

25
26 MR. LEVITON: Yeah me either. I think they're done.
27 With that I don't know.

28
29 MR. SPENCER: I haven't --- lately.

30
31 MR. LEVITON: It's withdrawn. It's definitely done.

32
33 MR. SPENCER: Oh it is? Okay.

34
35 MR. LEVITON: Yeah.

36
37 MR. SPENCER: Good because the last time I spoke to
38 Sal Alveery he's got other things going on so it's on hold,
39 but he was trying I don't know if you know this, he was trying
40 to ---

41
42 MR. LEVITON: Just a second Mr. Spencer. I need
43 someone to move to adjourn.

44
45 MR. DITOTA: I make the motion.

46
47 MR. LEVITON: Thank you Mr. DiTota and Mr. Shalika
48 seconded it. Thank you Josh. Mr. Spencer.

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