

**TOWNSHIP OF CHATHAM BOARD OF ADJUSTMENT
JANUARY 21, 2010 REORGANIZATION MEETING**

Mr. Shaw called the meeting to order at 7:30 pm and read the Open Public Meetings Act into the record

ROLL CALL:

Mr. Lawrence Dalziel	Mr. Parker Godwin	Mr. Karl Schmidt
Mr. Glen Nelson x	Mrs. Francine Alcorn	Mrs. Kathryn Kenny
Mrs. Therese Hough	Mr. Philip Vivona, Alt. #1	Mr. Joseph Contorno, Alt. #2

Mr. Shaw said the first act of business would be the Oath of Office so we have a full board for actions taken later this evening.

Kathryn Surmay Kenny, Philip A. Vivona, 1st alt., Jr., Joseph Contorno, 2 alt. - took Oath of Office

Mr. Shaw – we will now proceed with the Reorganization of the Board. The first action to be the nomination of a temporary chair who will conduct reorganization until the selection of the chair.

Mr. Dalziel nominated Parker Godwin which was seconded by Mrs. Hough.

Roll Call: Dalziel, Schmidt, Kenny, Hough, Alcorn, Vivona, Contorno, Godwin – all in favor

Mr. Godwin – asked for nominations for the Chair Person

Mr. Dalziel nominated Terry Hough, a second was made by Mr. Schmidt - hand vote - 3 in favor

Mrs. Hough nominated Larry Dalziel – a second was made by Mrs. Alcorn - hand vote - 5 in favor

Mr. Dalziel was re-elected as Chairperson of the Board of Adjustment.

Mr. Godwin turned the chair back to Mr. Dalziel.

Mr. Dalziel – we now need nominations for vice chair

Mr. Godwin – nominated Mrs. Hough, seconded by Ms. Kenny. – Hand vote – 5 in favor

Mrs. Hough nominated Parker Godwin, seconded by Mrs. Alcorn - hand vote – 3 in favor

Mrs. Hough was elected as vice chair.

RESOLUTIONS:

Board Counsel - Mr. Shaw – Mr. Godwin moved to accept resolution, seconded by Mrs. Hough.

Consultant Engineer – Mr. Ruschke – Mr. Godwin moved to accept resolution,
seconded by Mrs. Alcorn

Planning Consultant –Howard Michaels PPAICP- Mr. Godwin moved to accept resolution,
seconded by Mrs. Hough

Board/Recording Secretary – Kali Tsimboukis – Mr. Godwin moved to accept resolution,

seconded by Mrs. Vivona.

Establishing Meeting Schedule - Discussion: Mr. Godwin re: Site visit September 4th is on Labor Day weekend. He suggested perhaps August 28th would be a better date. Mr. Godwin moved to accept resolution as amended, seconded by Mrs. Hough

Designating Newspaper – Chatham Courier/Morristown Daily record – Mr. Godwin moved to accept resolution, seconded by Mrs. Alcorn

Transcribing Secretary - Mary Ann Fasano - Mr. Godwin moved to accept resolution, seconded by Mrs. Alcorn

* Roll Call: Dalziel, Schmidt, Kenny, Hough, Alcorn, Vivona, Contorno, Godwin – all in favor

MINUTES: December 17, 2009 not approved – re: typos one regarding the word no which appeared as on; re: Mrs. Hough.... Written as Mr. in error. Also, It should be noted that the Resolution had already been written and read into the record so the second motion was to approve the Resolution.

HEARINGS

**Michael Rosselli & Glen Kashuba
Chatham Day School
700 Shunpike Road
Block: 135 Lot: 1 & 9.
Chatham Day School**

Calendar BOA 09-135-1 & 9

Mr. Simon, Attorney

Mr. Simon said he was representing Mr. & Mrs. Rosselli and Mr. & Mrs. Kashuba with regard to the application before you pursuant to Land Use Law, specifically NJS40:55D-70A. This is not something that you or I see on a regular basis. Usually what you see are variances, site plans connected with use variances, etc. Here we are basically seeking an interpretation and we have also filed an appeal. It all has to do with jurisdiction – that is what we are here to discuss this evening. What I would like to do first is kind of go through briefly what the purposes of the application are. I do have one witness and then we can open it up at that point. Under 40:55D-70A the Board of Adjustment has the power to hear and decide appeals where it is alleged by the opponents which are the Rosselli's and Kashuba's that there is an error in any order requirement decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance. Similarly 40:55D-70B provides the Zoning Board shall have the power to hear and decide request for interpretation of your zoning map or ordinance or special questions on which the board is authorized to pass by regarding the ordinance in accordance with the Municipal Land Use Law. Just by way of background, what we are saying, or the reason we are here tonight, is that the approvals granted to the Chatham Day School back in 2004 thru 2006 were jurisdictionally null and void due to the fact that those applications required conditional use variances that only can be granted by the Board of Adjustment. We specifically made a request to the administrative officer with regard to that issue and a response that the attorney for Chatham Township on the behalf of the administrative officer was that there was going to no action taken because basically time has passed and as we all know, typically, once and action is determined and a resolution is adopted/memorialized/published that applicant has a period of 45 days in which to file a private appeal of dispute. Paraphrasing of Mr. Woodward's position on behalf of the Township or stated so, that he was not going to entertain a determination as to jurisdiction and further stated as the applicant had an application pending before the board the application would take its normal course before any type of decision can be made. This does involve a legal issue and not withstanding what

some of our gut reactions would be, one wishing to appeal from a refusal to make a determination regarding the zoning ordinance (the zoning ordinance also talks to the need of site plan approvals incident to any conditional use approvals and separately pursuant to the zoning ordinance).

Mrs. Hough asked why this issue could not be taken up with the application that has been re-filed. Why do we have to go thru all this, why can't we deal with it when the application is presented.

Mr. Simon – that is some way it could be handled, we feel very strongly that when an applicant, because of lack of jurisdiction and our claim is that prior approvals are void and need to be treated as new. The burden of proof for any type of application, including the application that has been filed by Chatham Day School, has a certain burden of proof.

Mrs. Hough – again asked why this all could not be taken care of at one time. It seems to me that would be the logical course. Dismiss the appeal and have it all heard at one time.

Mr. Simon – we feel that our appeal has merit – the issue is this. The application goes forward and the applicant has the burden of proof. There is a difference in testimony that is presented, the information and the legal argument that is presented on behalf of the applicant seeking an approval to cover all of the issues needs to cover as part of the application. The issue we see – directly to the point. We think it is unfair to the Board, the Community and the applicant to go through hearing(s) where the applicant presents its witness', goes through their application and then rests and says we have presented an application and we feel we are entitled to relief for what we have asked for and we have covered all areas that comprise what we have asked for. Then a member of the public, such as me, gets up and says case law is clear and the prior approvals that you had previously approved are void, and by the way, all that stuff you covered may be well and good but you should have covered these other areas as well.

What we feel is we are actually doing a service to the community by being before you tonight because we are not playing fast and loose. We are being very up front. I want to remind this Board that by way of history, back in June of 2009 the Chatham Day School did make an application to this Board and in that application packet they acknowledged/admitted that the prior approvals were all null and void. What we are asking is a re-confirmation of that and that when the applicant does go in and they present their testimony that they cover not only what they are stating what they are covering by way of the application materials but also including all the relief that they were required to receive back in 2004-2006.

Mr. Shaw – is that not what the application is calling for?

Mr. Simon – in part it is – the current application pending before this board states with regard to the parking variance – that is in fact correct. But there is other variances/relief that we feel is required to be sought in the pending application.

Mr. Shaw – would it be beneficial to have the completeness reports completed by the Professionals for the Town before the board has to address this issue. I suspect that the completeness reports are going to raise that underlying issue as one of the current proofs that has to be made. In terms of the conditional approvals – in terms of sequence and timing I really think it would be beneficial to have the reports completed by the Township Professionals on completeness. It will identify, and may well coincide with what it is you are saying the applicant needs to provide. It is very common in the completeness reports for issues like that to be raised/put forth. I also would anticipate – there are two applications, one for appeal the other for interpretation. Certainly it would seem to me in terms of the interpretation application and what remains from your September 23rd letter as to issues that the review of an application, which I believe is purportedly filed to address all those issues – wouldn't it make sense to have the issues decided after a completeness

report has been issued so we know whether or not your concerns are in fact mandated to be addressed by the applicant.

Mr. Simon – just to be clear, one thing we want to do is move this along efficiently and appropriately. Typically when a completeness determination and the Professionals review the application, they review the application in light of what the site plan/subdivision ordinance provides for, including check lists items. In my experience such items as the invalidity due to lack of jurisdiction of prior approvals by another board is not something that typically the professionals pass on. For those reasons plus reasons I had stated, the applicant previously knew that they needed the approvals. We are just asking that they go before the Board, reserve all their rights on appeal depending on how things shake out in regards to the inter lying application. We feel that for purposes of presenting to this Board and to the Public Interest a full application that covers all the areas that we believe the applicant should cover – that is what we are asking for at this time.

Mr. Shaw – Steve Schaeffer, Counsel for the Day School is also present.

Mr. Schaeffer – we did file an application – it was a **DeNovo** application. What we are surprised about tonight is, in Mr. Simon’s notice for this appeal, which I understand in the hearing scheduled for December 17th – applicant withdrew its application, because he was between whether to go before the Planning Board or the Zoning Board. At that time Mr. Simon said in response to withdrawing the application “it is an enormous waste of time and energy to go through a process where you are forcing the objectors to file and appeal”. In his notice he requested that the school immediately apply to the Board of Adjustment for conditional use approval. We did that. He demanded that the School file preliminary Site Plan for approve **DeNovo**.... We did that we are asking the Board of Adjustment in the new application to rule on everything. At that time we feel Mr. Simon will have a full hearing on any concern/objections/issues.

Mr. Shaw – Mr. Schaeffer – the burden of proof – you recognize it would be your client’s burden of proof to establish those approvals.

Mr. Schaeffer – We don’t necessarily intend to establish those approvals. We are coming in with a new site plan. Think about what the applicant is asking in his request. First of all there is no irreparable harm that will be suffered by his clients. We filed our application a month ago. I asked for Special Meetings so we can keep this on a fast track. We, as much as the community, are interested in bringing this to a close. Common sense would dictate that all this concurs at the same time. When you read that **DeNoble** application... any site plan issues/questions/concerns are open for scrutiny at that time. I don’t understand – we did exactly what Mr. Simon said in his notice.

On the jurisdiction issue, we think this is really an effort to get a review of the Planning Board approval. There has been no action of the Zoning Officer. At the time the Planning Board approvals were approved there was a process to go through – a **Prerogative Writ**. His clients were notified. This is just a back door effort to extend that period of appeal. As far as irreparable harm – compare the harm to his clients to evoke the CO versus a school that has been operating for 5 years under the Planning Board Approval. Lets be objective. This is a colossal waste of time.

Mr. Simon talks about a couple of things. If we are talking about a **DeNovo** application then it would be as of 2004 including all site plans, variances acquired etc.

Mr. Schaffer – we are talking about **DeNovo** application on the site plan submitted. Many of the variances that existed in 2004, as Mr. Simon is well aware, are no longer part of this application – we removed them. In order to accommodate or come to a middle ground – there were 4 structures in the rear closest to the

Madison Residence which has been removed. Are we going to be asked to talk about variances granted for setback for a conditional use? It doesn't make sense.

Mr. Shaw – you are requesting a finding that this is a conditional use.

Mr. Simon – absolutely. In fact I had a conversation with Mr. Schaeffer and I asked these questions point blank. Are we going back to 2004 – when you are presenting your application are we going back to 2004 – not in terms of proving your bulk variance relief from the building that you intending to tear down but rather for what is there right now – full site plan approval and whatever bulk conditional use variances that are required as they were in 2004. Understanding that if you're working something out obviously we are not going to be talking about that.

Mr. Shaw – I believe that is what I just heard. Irrespective of what you may have – feeling tones may cause people to hear things differently than what one stresses to each other. What I am talking about is we are on the record tonight – is this not what you would be expecting the application to provide?

Mr. Simon – as long as the applicant, without prejudice to the applicant reserving all rights presents and application as if whatever was approved in 2004, 05, 06 by the Planning Board didn't happen I am ok.

Mr. Schaeffer – I don't have to do that – the reason being is because we are not conceding for a minute what the Planning Board did back then was invalid. It would be moot for us to discuss that. We are coming before you to get a stamp of validity. The court rules, for example, allow parties to plead in the alternative. You can do the same in a municipal agency here. What we are saying is – we are not conceding that what the Planning Board did back then was necessarily wrong but we are not here to fight that battle. We are coming before this Board for everybody's benefit to make the record perfectly clear. Unimpeachable from the community, the school standpoint so there can be absolutely no question. I don't think your Planning Board would have proceeded unless they thought they had jurisdiction. Whether they made a mistake or not is not important at this point. We are starting fresh, from scratch with an application that has all site plan issues open, all conditional use issues open, all variance issues open which have been pared down. Without any type of foundation for what we have to get done – there is no substance to it. Why do we have to admit/deny what happened from 2004-6 when we are doing what this applicant has asked us to do? Come before this board for a full hearing, no jurisdictional issues with all requests open. Why do we have to admit something for no reason at all?

Mr. Simon – we have never asked the applicant to admit anything. All we are asking them to do is to present a complete comprehensive application.

Mrs. Hough – that is what they are doing... you are wasting the Boards time here tonight as far as I'm concerned.

Mr. Dalziel – you will have all opportunities to cross examine

Mr. Shaw – which again gets back to my completeness. What usually happens with a completeness report that Mr. Ruschke issues is that he goes thru and summarizes the application and identifies all the relief being requested. The application you will be having will be a DeNovo application before a determination as to whether or not it is a conditional use and a DeNovo review as to whether any variance issues involved, treated as a **D1/3** variance because of the relief requested. Again, we had carried this matter with the intention of having an application filed so that you could make an informed decision. Asking in light of what you have heard here this evening is just not grounds for carrying your issues for another month until a report is heard and presumably what is going to happen is that this will be a DeNovo application as requested with all fundamental issues that have to be addressed having to be decided again.

Mr. Simon - I think that would be appropriate. I think that one of the issues, not to be decided tonight, is how many variances, etc. - that is not why we are here. I believe the reason that we made the application, at least up to this point, and what we are hearing is what we want to hear frankly from the school.

Mr. Schmidt - are there any concerns, comments, questions that are being raised right now that could not for any reason be addressed pending the application by the Day School.

Mr. Shaw – not that I can see.

Mr. Schmidt - If the completeness review comes back and doesn't touch on the points that Mr. Simon is raising he can raise them at that time of the application of the Day School.

Mr. Shaw – he can raise that at the time but I think the concept would be to allow that the Board would require him to address the issues.

Mr. Schmidt - as I recall there have been other applications that might have had other questions similar to this (River Rd. - Use) or something of that sort of grandfathered in – those discussions take place within the context of the actual application.

Mr. Shaw – yes and it will all be on the record so there is an opportunity for any member of the public to know what is going on.

Mr. Schmidt - I am just trying to find out, if that is the case, if all the concerns/questions that may be raised here in the absence of a completeness review addressing the specific questions that a Mr. Simon has can be raised when the Day School application is heard why are we running a parallel application.

Mr. Shaw – it was anticipated – what I was anticipating – was the appeal and the interpretation would be dismissed after the application is filed/reviewed and confirmed that it was going to address all those issues. In fact it would have then proceed as a conditional use site plan application addressing all the underlying issues associated with the application.

Mr. Schmidt - If in the context of the Day School application, Mr. Simon is now satisfied that his questions/comments are being heard could he re file essentially this application at some point in time in the future as the Day School application is going forward.

Mr. Schaeffer – felt this was premature

Mr. Shaw felt there was also a real question which I don't want us to get us moving in a superior court lawsuit challenge but I have serious reservations as to whether or not this is an appeal from the decision of an administrative officer. In fact, what it is a decision by the Township of Chatham as evidenced by the opinion of its municipal attorney? If that is the case it is not an appeal of an administrative officer's decision but actually it would be a mendacious action in Superior Court to compel the Township to enforce its zoning ordinances. I just would not like to have this Board finding of that nature on the record because you might find yourself pursuing a litigation issue which, quite frankly, would be a waste of everyone's time and money.

Mr. Simon – which being said what we would ask still is that the matter be carried.

Mr. Shaw said the attorney from Madison was in the audience and he asked if he would like to address this Board.

Mr. Mezzacca, representing the Borough of Madison, pointed out that Madison was never noticed in 2004 so he was interested in having it reviewed by Madison's engineers as it relates to the impact on Madison. My only comment is that it makes sense to have the hearings but we be noticed to review the plans and have our input at that time for any issues about the school being approved under conditional use. The Borough of Madison should have the opportunity to review that which is submitted.

Mrs. Hough – is not clear why the Borough of Madison should be noticed.

Mr. Shaw – if the property is adjoining another municipality so legal notices are supposed to sent to the clerk of that municipality.

Mr. Schaeffer – one other comment is that our interest is to get this on as soon as possible. It is not a small application. We did ask for a special meeting. We filed on the 23rd of December so we want the community to know that we are interested in getting this on a heard. A set of the plans have been given to Mr. Simon and promised to send Mr. Mezzacca one as well.

Mr. Shaw – for the record this particular appeal application is going to be carried to the meeting in February. It is my hope that the appeal and separate interpretation will be formally dismissed prior to that so we don't have parallel actions proceeding but we will have to wait and see what your position is until after you have had an opportunity to review the issues. As to scheduling... there is a regular scheduled meeting in February on the 18th. There is no determination as to the completeness of this application but we will keep you apprised of that status. This will be carried without legal notices to the February meeting.

**Village Supermarkets
641 Shunpike Road
Block 48.17 Lot 126.04**

Calendar Boa 08-48.17-126.04

Jay Delaney, attorney

Mr. Delaney said they were here pursuant to paragraph. 68 of the Resolution of February 19, 2009 which was a condition setting forth where we are to be hear each year showing that we are in compliance of the Resolution. We were here in November with a site visit early in December. We are back to confirm and put on the record that we have complied with the Resolution.

Site visit report read into the record (A33) by Mrs. Hough.

Mr. Delaney felt the site visit spoke for itself. The comment of the board spoke to the fact that we were in compliance with the resolution. I ask the Board for their approval of the Resolution so that we can continue until next year.

Mr. Dalziel asked for discussion/comments/requests from the Board/Public

Mr. Schmidt – said he was pleased at how it was being maintained and the additional safety issues installed by the Land Lord.

A motion was made by Mrs. Hough to continue the use for the next year according to the Resolution, which was seconded by Mrs. Alcorn. Roll call: Schmidt, Kenny, Vivona, Alcorn, Hough, Godwin, Dalziel – in favor.

Mr. Shaw said there would be an action of meralization at the February Meeting.

Christopher & Gina Zarro

Calendar BOA-09-72-

7

**125 Longwood Avenue
Block 72, Lot 7**

Barry Osmun, Attorney

Mr. Osmun – in regard to this application for a variance for a rear yard setback I have 2 witnesses, 2 exhibits, an architect and planner.

Site Visit Report (Dec. 5, 2009) read into the record (A22) by Ms. Alcorn

Mr. Osmun – as indicated in the site visit report the required set back in the rear yard is 50 ft. There is presently an existing non-conforming rear yard. The foundation of the building is 47.9 ft. The overhand varies from 46.64 ft. to 51.28 ft. because it's on an angle. You are talking about a 3.438 inch deviation at the closest point. The actual square footage is within the setback so I would respectfully submit that it is not a large infringement. I would call Mr. Zarro who has previously been sworn.

Mr. Zarro – said he had visited his 3 closest neighbors and discussed his plans. They all were excited that someone had finally purchased the property and the welcomed the proposed. They felt what has been done is a great improvement. Mr. Zarro read a letter signed by the neighbors (January 2010) concerning our residence where they supported what has been done and proposed. They did not believe it would have any negative impact on the neighborhood.

Mr. Shaw – noted that the letter(s) (A23 a, b, c) did not serve as testimony. The Board will consider them as part of the record.

Mr. Shaw – took a picture of the rear of the home prior to construction. (A)

Mr. Dalziel – at the site visit there was a question about the possibility of purchasing property from one of your neighbors.

Mr. Zarro said they had approached the neighbor Mrs. Curcio. She supported our application. We did not purchase any additional property from her.

Mrs. Alcorn – aside from the fact that the neighbors support this my question is since you knew you were applying for a variance and you knew that in order to do what you wanted to do you needed to apply for something that wasn't necessarily what you were entitled to and you had to go before a board. Why you ask your builder or give authorization to him to start construction when you knew that you had to make apply for something that you had not received yet.

Mr. Zarro – We hired an architect prior to putting an offering on this house. He met with us and drew up some plans. We like the plan; we put an offer on the house and secured funding for the renovation/mortgage from FHA. We submitted those plans to FHA. The seller of the house approved our proposed monetary agreement so on June 10 we went ahead. I have a copy of a letter and plans. The initial letter is actually dated May 12th and describes what we had planned to do. The letter (A26) mentions that a variance is not required. The plans did not include a survey. On June 19th, the day the Federal Inspector came to the property he collected the fee and submitted the plans to the Federal Government.

Mrs. Alcorn – your loan process etc. is a separate issue from the ordinance.

Mr. Osmun – what we are trying to demonstrate is that this was not an intentional action.

Mr. Zarro – on July 1st after the inspection we had another letter from the architect where he states that he was remiss in stating that the house was in an R4 zone which required a 45' setback. The house is actually in R3 which requires a 50 ft. setback. He then explained a variance application.

Mr. Dalziel – said he would like to point out in the May 12th letter – it appears to be a proposal for services. The way I read this there is no statement stating no variance was needed?

Mr. Zarro – based on how confident he was we were willing to go ahead. In another letter he noted that the second floor addition had been removed which should allow us to go forward with a portion of the project. We put our permits in for two bedrooms. We went ahead and submitted the plans for a 2 bedroom construction and got the permits. Two months went by and we heard nothing. We had already ripped off the back room.

Mr. Schmidt – there is a letter here where you requested a variance.

Mr. Zarro – that was submitted by the architect. We new we needed the variance. Our architect said we would have an answer within 45 days.

Mr. Schmidt – I really don't understand the demonstration. You knew about the need for a variance.

Mr. Osmun – He did this to protect the house.

Mr. Robert Donahue, Architect located in Madison – gave his credentials. I was retained to answer questions for the site reading. The logical progression of why this addition is where it is – initially the house was a 3 bedroom house but the smallest bedroom was 9 x 12. There was an existing porch in the rear of the house. Logically, if I were to build, I would do the same. I would enclose the porch to increase the area of the family living space and to take advantage of the space above it while getting rid of the smaller bedroom. I think what was proposed was reasonable and makes sense. Photo board (A29) represents photos from adjacent properties to show the visual effect.

Mrs. Hough – is there a way to do this without having variance relief? Can it be reconfigured?

Mr. Donahue – I am not sure that there is a way to make 3 bedrooms of smaller sizes. One of the things we did when the Board came out was to leave a King size bed so that you could view how it would fit in any room. You could barely walk around the bed.

Mrs. Kenny - If I was your client and didn't want to get a variance what would you do.

Mr. Donahue - I would probably say you could not get a bedroom with a master bath. Because of the configuration in going above the porch you have some irregular shapes. I probably wouldn't have recommended going out that back wall. The issue was to utilize the space above the porch.

The plan shows a 12.8 ft. addition with 10 ft. existing which is a 2.8' ft - it is 1.8' at the corner and comes out an additional 12 inches. The dimensions of the master bedroom, had it not been candle levered – 17 ft wide 8 ft. Right now existing is 10 feet and the existing corner is into the setback approx. 2 ft.

Mr.Schmidt - even if the existing enclosed porch which is in the setback, if you were to simply build the bedroom on top of that what would the dimension of the master bedroom be.

Mr. Donahue - 10 ft x 17.

Mrs. Alcorn – the original bedroom was where the master bathroom and partial hallway is on the new plan?

Mr. Donahue – yes – the dashed line represents the wall of that former bedroom.

Mrs. Alcorn – would it have ever been a consideration to put the bathroom/closet over the porch. As I am looking at the existing bedroom on the left hand corner it is 15.8 by 12; the one above the porch is 12.8 x 14.10 so it kind is comparable in size (bedroom). Would it have been possible option to put the bathroom and closets and keep the three bedrooms?

Mr. Donahue – of course it is a possibility but again I go back to the original bedroom size which was a small bedroom. .

Mrs. Hough – that may be the case but some times the house is what it is.

Mr. Shaw – a follow up question to that – you in fact did close on the property after you knew it needed the variance?

Mr. Zarro – said he supposed he could have walked away from the purchase.

Mrs. Alcorn – comment on McEntee letter – its astounding to me that he would note in here that some of them have reputations for being “easier than others” and knowing he had a variance in this town which asked for a lot more than you - so I concede that it was a little misleading.

Mr. Dalziel – its disappointing seeing something like that written.

Mr. Dalziel asked for further questions...

Mr. Godwin – under these circumstances, where it’s already been built, we have to consider it as if it had not been built?

Mr. Shaw – you need to look at the applications as if it hasn’t been built and looking at the underlying proof conditions, the justifications, etc.

Mr. Schmidt – Mr. Osmun is right, situations similar to these have been in front of us before. The fact that this is built preempts us. I personally find it highly unlikely that this board would have approved something with a 2.5 ft candle lever into a setback. We appear to be pre-empted from considering that, the interaction that normally occurs in discussion for possible minimizing doesn’t exist.

Mr. Shaw – you could consider that ability as criteria as to why you didn’t want to approve what is being proposed. What I was saying is that they need to submit their proofs (in process) and we need to evaluate those proofs as if there was no structure there. If you felt strongly enough that there were alternate configurations that could/shouldn’t be considered to eliminate the variance this would be in your decision making. I think also what needs to go is that in terms of the applicant having gone forward with a development which required variance approval, part of which we heard leans toward understanding on how this all transpired which is helpful for the Board. That is not the relevant issue for the board’s determination.

Mrs. Hough – addressing Mr. Osmun – the application has been submitted under hardship. She was advised by Mr. Osmun that he did not do the application but agreed it was not a hardship. It’s a C3.

Mr. Shaw – it is also driven in part because of the peculiar shape of the lot. The physical position of the lot which is parallel to the street.

Mr. Osmun – when I looked at this Dr. Zarros showed me the Architectural Plans etc. Since that time we have found an actual survey of the property with more exact numbers. When I first looked at this it showed it as nonconforming – that the difference from what was there and what was built was 1.75' difference. I asked Dr. Zarro why a building permit was not drawn. Dr.Zarro said he had gotten one for the first floor then the builder came in. It was his idea to change the plans to 2 bedrooms, get the permit and at least you can start out. As thing happens, it took a while for the application to be deemed complete and as it was getting cold. Etc. I am pretty sure the contractor said we will just close it for now. I can tell you that if the applicant was aware of the problems he would not have done it.

Mrs. Alcorn – didn't the second story have to be framed out for it to be enclosed? If so there was no permission for that either.

Mr. Osmun – said he had no idea... he would say it was the contractors idea.

Mrs. Alcorn asked if there was to be any pillars/columns under the candle lever or was it just going to be like that?

Mr. Donahue said he had not prepared the plans but said there appeared to be some brackets.

Dr. Zarro - in answer to a question by Mrs. Alcorn – said it was a gabled roof which could be removed.

Mrs. Alcorn – there is that little “L” shaped property in the back, if the neighbor was willing to give up some property, what would it take to eliminate this variance – 2' or 18" - what depth of that property would need to be purchased over to the Zarro's.

Mr. Donahue – our planner has more accurate information about the setbacks which are different from the plans previously prepared.

Mr. Dalziel – I think it is more than a foot and a half according to the plan. Let's be accurate please.

Mr. Osmun – it could be done by deed.

Mrs. Hough – could that be something that could be addressed.

Mr. Dalziel – we suggested that at the site visit and I am disappointed that the question was not addressed.

Mr. Zarro – said it would cost more money to do that.

Mr. Dalziel – I understand that.

Mrs. Hough – I would just like to ask a question about the merits of the application. In terms of the lot and building structure. Does the shape of the lot or its topography play into the way this building was designed?

Mr. Osmun – we have a planner who will testify to that.

Mr. Dalziel asked if there were any other questions from the architect.

Mr. Schmidt – I want to be clear – I am looking at the Hatch Mott report. The existing encroachment is the existing porch which is 47.92 ft. and the proposed would be 46.17. I am assuming the proposed is the outside of the new addition on the top. I think the amount of candle levering that intrudes above the current porch would be that 1.5 ft. that Mr. Osmun suggested not 2.5.

Mr. Donahue said he thought the planner would address that.

Questions raised on the type of roof – gable as opposed to hip. The gable gives another 8 inches out.

Mr. Shaw – said it was not that the roof doesn't count against it but the point being that if you are looking at an overall structure, if there is some way of dealing with the structure which will have less of an impact that might be a consideration to the Board in giving approval. A different roof design might prove you have less of an impact.

Mr. Dalziel – that is why I asked a question – which presents more mass to the viewer and your answer, was the gable.

Mr. Donahue – there is more vertical surface as there is to a sloping surface.

Mr. Shaw asked if the application submitted showed a hip roof or a gabled roof.

Mr. Donahue – I believe these are the drawing submitted with the application

Mr. Dalziel – then one would assume were this to be approved the roof would change.

Mr. Dalziel – I think I heard earlier that the amount of increase beyond the setback is something like 26 feet.

Mr. Osmun – the plans show a total area of the addition as located within the setback is 26.37 sf. That is the whole thing. It's at an angle.

Mr. Shaw – A29 has a sight plan diagram with a highlighted area delineating the additional encroachment area of the second floor.

Mr. Dalziel – which doesn't include the existing encroachment. So I am clear, since your involvement in the project have you looked at alternates for this plan.

Mr. Donahue – No, it has not been explored.

Mr. Dalziel – is it your opinion that there are possible options such as the bathroom in the back.

Mr. Donahue – there is always more than one solution to a problem but as I have testified before this is probably the most logical solution.

Mr. Dalziel asked for any other questions from the Board/Audience. None heard.

Mr. Osmun called Michael Petrey, Petrey Engineering, Fairfield as his next witness.

Mr. Petrey said he was a licensed Planner, Professional Engineer and registered Architect in the State of NJ. He has served as a Planning Consultant to Nutley's Planning/Zoning Boards, Verona's Zoning Board, etc.

Mr. Petrey said he was retained for the purposes of reviewing this application with regard to the variance for rear yard setback. I took the opportunity to visit the site, review the plans, review the ordinances and the Master Plan.

I will refer to two exhibits, one of which an aerial mapping (A30) which I have overlaid the Municipal Tax Map. The second exhibit I am going to refer is a series of photos (A31) taken under my supervision as well as a copy of the survey on the left hand side that the Zarro's got at the time of purchase. On the right hand side we have overlaid the addition on that survey. When I say we have taken the survey that they utilized in purchase we had gotten that from the surveyor they hired. We had requested his cad files because I noted on the plans submitted to the Board that distances were shown as plus/minus. I wanted to be able to give this Board the most accurate information available. The subject property is lot 7 on Longwood Ave. For purposes of testimony I will refer to this as the south side of Longwood Ave and the North side would be the Borough of Chatham. In this particular location, the center line Longwood serves as the separation of Municipal boundaries. Highland Ave is toward the bottom of A30, Washington Ave being a developed street in the Borough. Generally when I am looking at property for rear yard variance I want to look at the block because what is happening across the street isn't affected by a rear yard variance yet what is happening on the particular properties immediately behind are. In this particular instance we have some interesting lot configurations. The property is located almost mid block and the topography in this area slopes significantly from Highland to Washington according to the topo maps available. The vertical drop is about 65 ft. between the two streets. The properties within this area are developing in a terrace pattern. You will see a series of retaining walls as you walk the sites. The subject property's shape – the side lines and rear lines are parallel and perpendicular yet the front line along Longwood is such that to the point where on the east side of the property the depth is 158.89 ft and on the west side its only 127.71ft. and that is across the 100 ft. width on that rear property line. The parcel itself contains a total of 14,330 sq. of which appear to me to be the second smallest lot in the neighborhood to lot 8 which immediately adjacent to the east. What we have done on the bottom of this sheet, in addition to adding the tax map, we included acreage from tax records for each of the lots within the block area. I will note for the record that acreage shown for this property is point .337 while lot 8 is .309 which is a little smaller than the subject property.

There was discussion about lot 9 – the possible purchase of property – the records show that property is .468 acres and that is going to come to just over 20000 sf which is the requirement within the zone. Lot 6 abuts this property to the west and extends back well beyond the limits of lot 7; lot 8 comes about into the side of the existing house; lot 9 is L shaped and the tail that has been talked about that extends behind lot 7 is about 33 ft. wide. Lot 7 and 8 are undersized within the zone and Lot 6 probably undersized by less than 1000 sf. This lot is about 19000+-, lots 7 & 8 are about the same size, just under 14,000 sf. The subject property, along with all of the properties within this area, is located in R3 zone. The R4 zone happens just to the other side of Washington. The R3 allows for single family residences on 20000 sf lots. It requires 90 ft. frontage with 100 ft. width. It requires a depth of 200 and minimum front/rear of 50 ft. The side yards are 15 ft. for single and combined not less than 30% of the lot width. In this particular instance it's about 15 on the two sides. The permitted impervious coverage for a lot in this zone is between 10-40,000 sf is calculated by adding 4,000 plus 20% of the lot area graded in 10,000. In this particular instance that would permit impervious coverage of approximately 4866 sq.ft. In referring to A31 the variance requested – the existing home is situated on property nearly parallel to Longwood and has approximately 53 ft. setback to the stoop. Given its orientation the sideline setback varies significantly from front to back. There is a minimum side yard of 21.6 ft. and the complying side yards are excess of 64 ft. The existing rear yard setback (calculated from Cad files provided) – at the westerly corner the existing enclosed porch the setback is 48.48 ft. and on the easterly corner by the enclosed porch its 53.83 ft. As shown in the photo the existing porch was a single story. There was a flagstone patio immediately outside of that towards the rear of the property. The existing house contains a total of 1,755 sf. That is 967 sf on the first floor, including the porch and 788 sf on the second floor. We are talking about a modest sized home. The tax records

referring back to what was marked as A30 have this particular house as 1,640 sf. We are in the ball park, this home and addition shown would add a total 224 sf to this house which would keep in less than 2000 sf which is an important number. When we look at the home immediately surrounding it you will see that the sized vary dramatically is a bit larger. Lot 8 is 2268 sf; Lot 6 is 1822 sf and as you go back to Highland they get considerably larger – up to 5000 sf+. In my opinion with this proposed rear addition the most westerly corner will be 46.88 ft from the rear property line. At the jog (closest point) it is 46.64 ft. in the rear property line and the most easterly corner is 51.28 ft. The portion of the overhang that we are talking about deviates at the closest point 3.438 inches and at the easterly end it is clear of the setback by 1.338 inches. We are talking about total 26.37 sf.

Mr. Schmidt - If I were to look only at the part that is encroaching further than what exists today, by taking, at least on the westerly side, 48.48 (current porch) less the 46.88 setback new and come up with approximately 126 ft of encroachment beyond the existing structure.

Mr. Petrey – the answer is yes and you're getting to the questions for the architect about what overhangs are.

Mr. Petrey – the reason is that setbacks are taken perpendicular to the property line. When we measure the setback of the overhang we are measuring it perpendicular to the back line. That is skewed to the overhang itself. If the overhang comes out 2.5 ft. that doesn't necessarily mean 2.5 ft less on the setback because you are making a triangle. 2.5 is an accurate statement, the difference in the setback is calculated based on the exact dimensions on the drawing. What we did when we calculated the area is we literally ran to that setback line – we created that as a line in our cad file and we ran the dimensions of the drawing and enclosed it as a figure and calculated that area. If the addition is built to dimensions shown on the drawing exactly your encroachment all the way back to the 50 ft. setback is 26.37. In my opinion this variance can be granted under C2 criteria. The MLU law recognizes certain criteria in terms of purposes of zoning. The design offers a significant aesthetic improvement over the existing home and that improvement is in keeping with the surrounding neighborhood. That is an important part of the criteria because making something prettier does not grant you a variance, making it better and in keeping with the surrounding neighborhood (ref pictures lots 8, 9, 6) – these pictures represent what is there today. Note that all of those houses have gable roofs. Those houses have 2 story structures facing the subject property. The home on lot 8 does have enclosed porch which is roofed over. In my opinion, what the applicant is asking to do is in keeping with the character of the neighborhood.

Mr. Dalziel – are there any other houses in the area that have elevated candle lever conditions.

Mr. Petrey – Obviously I did not walk into the rear yards of any of these homes but there were second story overhangs on some of the homes in the area. I can't recall exactly where those are located nor can I tell you for sure that they are on the Twp. side of the street. The important issue here is that fact that this addition brings this house closer to conformity with the size of the homes in the neighborhood. It's a modest addition and maintains an appropriate size home on this lot. As such I offer that the project proposes desirable visual environment which is a purpose of zoning that is utilized for these types of variances. I also offer that as the applicant himself pointed out, the home had been unoccupied for a period of approximately 18 months and the re-investment in the subject property prevents the potential for a blighted condition which is another criteria under the MLU. In support of those criteria I looked to your zone plan/ ordinance. The Master Plan speaks at length about the problem of tear downs through out the Township and the construction of mc mansions in their place. Here you have a modest size home that when renovated to today's standards nothing spectacular as to the size of the bedrooms/baths this particular home at 2000 sf is appropriately sized for this particular property. It is at the low end of this particular neighborhood. Had this original constructed been oriented parallel to the side line rather than parallel to the front line the proposed footprint would fit without variance on this property. We rotated the entire

configuration onto this property and this house fits on this property had it not been skewed to the front line. If that sounds like it could be a C1 hardship, I believe it could, but I am not going to waste this board's time proving our case on different levels. The C2 looks to us to balance this variance and suggests the situation is unique to the subject property. In this instance the subject property is one of two parcels that are well below the lot size standard. The adjacent property (lot 9), where its rear setback has its greatest impact, is an L shaped property (shown A30). The 30 ft. wide strip that abuts the rear of this parcel is the parcel most affected by this rear set back variance. Due to the orientation of this particular piece of property and what abuts it there is limited impact, that is, we have no impact on light/air/space or privacy. What is in that tail end of lot 9 is a pair of horse shoe pits? In essence, this is a fairly unique situation due to lot configurations and keeps our variance in balance within standards. I believe the benefits outweigh the detriments. With regard to negative criteria I believe this variance can be approved without substantially impairing your zone plan/ordinance. In my opinion, maintaining the existing home on this property and adding a small addition is exactly what your Master Plan is looking for as it tries to avoid tear downs. The goals/objectives of number 5 of your 2006 re-examination reports specifically states preserve desirable community and neighborhood character by managing the scale of new/expanding buildings/alteration to their landscape. I believe that the minor area of this encroachment, less than 27 sf. total, less than 7% of the 50 ft. requirement would not be discernible to the trained eye much less the untrained eye. It is just too small of a deviation. I further offer that the variance poses not substantial detriment to public good rather offers improvement both from aesthetic perspective while balancing the size of the home and from the neighborhood perspective as taking property and putting reinvestment dollars into that property and changing the property from an unoccupied property to an occupied property to a new couple raising a family – therefore I offer that the proposal meets both negative/positive criteria under the C2 variance.

Mr. Osmun – RE: existing non-conformity – what was there before the addition – it was 47.92 ft when purchased?

Mr. Petrey – the existing setback at time of purchase to enclosed porch is 48.48 ft the proposed at the closest point is 46.64 ft. The proposed addition is 1.84 ft closer to the rear property line at its closest point than the existing. That 1 ft. 10". 3.68 percent greater encroachment.

Mr.Schmidt - understanding you're a planner and not an architect, do you have an opinion as to whether there is an alternative to what is currently constructed and considered that would meet the homeowners/applicants requirements/desires but encroach less and require less of a variance.

Mr. Petrey – if the originally designer had taken the approach of how do I avoid a variance and how can I build an addition to this house, the answer is yes. Going out in the rear as previously stated makes the most sense because you are building over an existing structure. To get the square footage you have to build this. The bedrooms in the plans are not expansive, they are modest rooms.

Mr.Schmidt - In looking at the master bedroom I believe it is 12 ft. 8 inches and if we are talking about a difference of 1.6 feet or 1 ft. 10 inches that master bedroom could have been scaled back so that there was no further encroachment on what currently existed.

Mr. Petrey – remember you are measuring distances in different directions. We are talking about that triangle again. I did not calculate what the master bedroom would be if it met the 50 ft. setback but again re: A31 the triangle for the 50 ft setback is shown. You can see the shape the room would take if you built it to the setback. On the easterly side you can go out further than they went. The setback there is a foot or shorter than what is allowed. You have an odd configuration to your room. If that is what we are going to talk about than I will go back to a C1 criteria and talk about orientation of this particular house on this property. The value of the hardship criteria as well – I don't think we need to go there. I honestly believe

that C2 works here. Both C1 and C2 variances are present because of the orientation of the house on the property. If we turn the house parallel to the side property line this fits by feet – we have extra.

Mr. Osmun – I don't know where the Board wants to go – whether they would be more receptive to a C1 as opposed to a C2

Mr. Petrey – I think the answer to the question is – if you looked at this from the beginning, and that is why I think it was important that Dr. Zarro put the letters on the record, because he is not looking for absolution for the fact that he built it and enclosed it, but I think he followed the guidance of a professional. It took him to a point where he committed a good sum of money (down payment on the house) to a loan. The loan was approved conditioned upon the plans he received. When they approved the loan because of what was proposed. Those plans were submitted.

Mr. Schmidt can that be demonstrated. I hear what you are saying but I truthfully, the letter that the applicant sent in on July 14th contradicts what you are saying. Not that the loan was approved on a contingency but that the fact that he went forward...

Mr. Petrey – I am not saying he didn't know he was following the advice of his professional.

Mr. Schmidt - this is where I am taking issue. He wasn't. You're trying to say he was following the advice of a professional that no variance was needed.

Mr. Petrey - No, the professional he hired gave him plans, plans were submitted as part of his loan application and as referenced in the loan documents and the loan was approved with those plans as a condition of the loan. It is contingent.

Mr. Schmidt - I would like to see that. Again, he went forward not on the advice of his professionals with regard of the variance, he knew before he purchased the house that he needed the variance discussed.

Mr. Petrey – read portion of the paper to the board and submitted the loan document (A33) for the board to view.

Mr. Shaw said a copy would be made and the original will be returned to the applicant.

Mr. Petrey - the question in regard to purchasing property from the adjacent owner, when you look at the tax records, that property is noted as having 0.466 acres and if you calculate it at 3 decimals it would have about 200 sf. above the 20,000 sf requirement. I don't know that the tax data is accurate anymore than the areas of the actual constructed buildings are. It puts that particular lot very close to the 20000 sf requirement. The applicant hasn't secured a survey of the adjacent property and they don't know if the survey shows something different than that. You couldn't just take the 26 sq. ft to have it meet the setback requirements. You would have to make it so none of that line is anywhere near it. My guess is you might end up with about 100 sf that you would need to buy. What you would end up with is a configuration that has a little triangle out of what is already a very irregular shaped lot. And for what – to meet the zoning standard. You look at A30 – and what you see behind lot 6 & 7 – the rear yards back up to a substantial wooded area behind the existing properties. This is everybody's rear yard. There is nobody it affects in this particular configuration. I think that is important for a C2 because we have, in my opinion a fairly unique situation.

Mr. Schmidt – I do want to go to one part of your statement – where you said to do what? That is the essence of what is going on here. Because as Mr. Osmun notes, we have too many applications of people coming before the board, having done work that is not in accordance with the zoning standard. It is not but

for the zoning standard that we would look to try to minimize or to totally take away the variance. That is a function of part of what we do. Your applicant has pre-empted our ability to do that by building in this manner knowingly. These are situations that have just started occurring. This is something that was noted for the Township Committee as a specific issue that needs to be focused on and possibly addressed at the Township level because we are seeing more and more of these. This is not why would we go through getting this many square feet as part of another lot to avoid the variance but for the zoning standard. We are discussing the zoning standard. The applicant has blatantly, based on the July 14th letter, intentionally violating the regulations here. And, there is much construction in this town, from knock downs to additions where every other citizen in this town abides by the regulations. We have situations not even in front of us with the zoning officer where a new house will go up and even good faith small errors, in terms of measurements on roof lines/heights for a zoning code which is difficult for me to work out – our height regulation – we have had people take down the existing roof line and redo it. We take our zoning codes very seriously. This was not done in this case and by not having it done the applicant has pre-empted the process we do.

Mr. Osmun – If you bought a piece in the rear of the property, you can go to the Planning Bd. for a minor subdivision or lot line adjustment. You may eliminate this variance but possibly creating another one.

Mr. Schmidt - I understand that, but honestly Mr. Osmun, the issue here for me is as I stated it. Even further on, we really heard any effort by the applicant since the last time being here, to address, if in fact there is another way, to do this. Your discussion of the zoning requirements may not be required. Possibly it can be done by deed. The applicants' testimony said that they did not approach the home owner because it would cost too much. There was no approach made even to the homeowner behind here to consider this option. Your testimony and the architect's testimony is that there are different ways to configure this, there could have been, and maybe there still is. I have hear no testimony saying that we have come in here and we have looked and we are currently encroaching in a certain regard and that maybe things can be done differently to minimize that. That is a fundamental function of this Board and as Mr. Shaw said it is part of the proof that we are considering tonight as to what action we have to take here. I am really hearing flagrant, blatant disregard for the zoning code in this town. That troubles me.

Mr. Petrey – If that is how my statement came across I am sorry. That is not what I meant to imply. What I meant to imply with my statement with regard to the guidance that was given to this applicant before he started building – I am aware of the fact that he knew before he even purchased the property he needed a variance, the guidance that was given him was that he could submit a different set of plans which he paid for to the Construction Official to get permits so that he could start his construction. That was not going to take a long time. He proceeds to a point where his first floor is built and he has to protect it from the weather. The builder makes a decision to from the second floor and roof that rather than put a temporary roof on the lower level. Bad decision – yes.

Mr. Schmidt – we refer to the builder. The builder did not climb on the applicant's roof without the applicant's permission and frame a second floor. The applicant made that decision.

Mr. Petrey – the applicant agreed with the recommendation of the builder, just like he agreed with the recommendation of the architect and moved forward. The applicant is a first time home buyer and has never done this before. He relies on the people he has hired. He is relying on his professional who misled him and turned him back in a different direction. He is also relying on his builder.

Mr. Schmidt – I hate to argue this point but I will argue it to the extent that those assertions are being made. He did not need to break ground. His professionals told him and he sent a letter in even before he owned the property to us on July 14th saying he needed a variance. So you can say he relied on his professionals – we wouldn't be having this conversation again if we were talking about something that occurred and was a

mismeasurement in the field. His professionals told him he needed a variance to do exactly this before he owned the home. After he owned the home he went ahead and did it. My recollection, I think he and the contractor did it without even having a permit.

Mr. Petrey – he did not have a permit for the second floor. You are right. It is not on the drawings with which he secured the building permit. You are right.

Mr. Schmidt – and he was fully aware based on the advice of his professionals, before he owned the house and before he broke ground, for what he was going to do he needed a permit. Mr. Petrey said yes. Mr. Schmidt still felt that the board had pre-empted from hearing all the alternatives. I have not seen anything we do go through without considering alternatives. At the risk of sounding like the architect I think in general these types of variances and the proofs required probably have a little more threshold than other types of variances that we see. It is troubling that we have been pre-empted. It has been identified by this board as a problem in this town. I think this is a poster child for it. To the extent that Mr. Osmun looks at this, someone puts fill on a property and disturbs a steep slope knowing or unknowingly, it's a heck of a lot different than putting this on the back of the house without a permit/variance and knowing you need the variance.

Mr. Dalziel – you say we have been pre-empted but in my mind I am not sure that we shouldn't be asking that you consider what has already been suggested here. Ways to minimize or eliminate this variance. Please also note that this document represents a scope of rehabilitation. It doesn't reference these drawings. It says you are going to do certain things in a more or less general way.

Mr. Schmidt – I agree with Mr. Dalziel there is a lot of latitude to be in compliance with that loan.

Mr. Osmun asked that based on what is going on here are there any defaults on the loan or issues

Dr. Zarro – part of that was that the work be completed within 6 months.

Mr. Osmun – nothing further.

Mr. Dalziel – questions from the Board.

Mrs. Kenny – If I am correct, if you come up Longwood and make a right and go down Highland, somewhere in between 8 and 9 if you look toward the right you actually see the addition from Highland Avenue.

Mr. Dalziel – yes you do... I have been there and I have seen it.

Mrs. Alcorn – that to me is a neighborhood aesthetic. I don't find this addition aesthetically pleasing. When you were talking about who sees this addition you mentioned a woody back yard, no one is back there etc.

Mr. Petrey – I was talking about impact.

Mrs. Alcorn – I am too. If you are driving down Highland and you look to the right I am impacted by the addition of the house.

Mr. Petrey – that corner of the house is actually conforming. That is the side that would be 51 ft.

Mrs. Alcorn – I am just saying for me personally I don't find it that attractive. I am feeling this is more a hardship argument than the other one. That is my personal opinion.

Mr. Dalziel – I would concur with that.

Mr. Ruschke – apparently the board has 2 property surveys both by licensed surveyors. The second plan is not signed by the land surveyor. I would recommend that the board get a copy of the current property survey, signed/sealed. It is easy enough to get the accurate square footage of the adjoining lot. .466 acres is about 300 sf over the 20000 so it looks feasible that the applicant approaches that property owner and try to obtain 2-3 ft. of additional property behind that line. It looks like the adjoining property owner is using it for horse shoes, whatever, so it doesn't look like it will be impacted. Certainly that should be something they can pursue to mitigate the variance.

Mr. Dalziel asked for questions from Board/Audience for this witness. None heard.

Mr. Shaw – at this juncture, rather than the Board making a decision there has been a suggestion by the Engineer/Planner that we obtain survey information of the adjoining property.

Mr. Osmun – perhaps the application can consult with his engineer/planner to see if, given the state of construction, there is something to that can be done in the construction process.

Mr. Dalziel – I think there has been enough discovery tonight to suggest that there are possibly alternatives.

Mr. Osmun – I do want to say this. I don't know Dr. Zarro... I met him once before, for the life of me I think he got bad advice. I think if he knew what the consequences were. I think he is a good man. I don't think he would flaunt it and say the hell with this ordinance. I am going to go ahead and build it.

Mr. Shaw said the application would be carried to the next meeting.

Anthony Piscioti
Southern Blvd.,
Block: 68 Lot: 2.03.

Calendar BOA 09-68-2.03 42

Site Visit Report – Read into the Record.

Mr. & Mrs. Piscioti, applicants (sworn)

Mr. Shaw pointed out that there was also a rear addition which is going to increase the building coverage but staying in the setback of the standard requirements'.

Mrs. Piscioti – The variance required is the front yard. We proposed to build up. We did look at alternatives. The architect cannot figure out a way to set the second story back.

Mr. Dalziel – to be conforming you would need to set the addition back 18 ft leaving only 10 ft for the addition.

Mr. Dalziel said he did review the zoning table and its accurate based on the updated survey.

Mr. Dalziel asked for questions from the Board/Audience. None Heard. He then asked for a motion.

Mr. Godwin made a motion that the application be approved. Mrs. Hough Seconded.

Roll Call: Vivona, Schmidt, Alcon, Godwin, Hough, Dalziel – all in favor.

Mr. Dalziel advised that a resolution will be drawn up and ready for the next meeting.

An upcoming special meeting was discussed.

Motion for adjournment – Godwin/Vivona All in favor

Respectfully submitted

Mary Ann Fasano

Transcribing Secretary