

The meeting was opened by Ron Palmieri, Chairman.

Mr. Palmieri read a statement of compliance with the New Jersey Open Public Meetings Law as follows:

This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the Asbury Park Press and The Coaster.

Mr. Palmieri then led the meeting in a salute to the flag.

Present: Messrs. Palmieri, Slazyk, & Porzio and Meses. Oltman and Madzin

Absent: Messrs. Battista, Rickert, & Roche

Also present: Mr. Hirsch, Board Attorney
Mr. Rauch, Board Engineer
Mr. Gotfredsen, Board Secretary

Mr. Palmieri read a statement of procedural guidelines.

ROBERT JONES 9 TAYLORS RUN BUILDING & LOT COVERAGE AND REAR SETBACK VARIANCES	BA 2008 – 27 BLOCK 123.01 LOT 14.15
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Peter S. Falvo, Jr., attorney for the applicant, and Robert Jones came forward.

Mr. Hirsch advised he had reviewed the affidavit of publication and proof of service and found them to be in order as to form.

A motion to accept service in the Jones matter was offered by Mr. Porzio and seconded by Mr. Slazyk. A voice vote in favor was unanimous.

Mr. Falvo asked to have **Robert Jones**, 23 Winthrop Drive, Jackson, sworn in.

Mr. Falvo asked Mr. Jones, with regard to 9 Taylors Run, did you construct this home as well as the other homes in this development.

Mr. Jones answered yes.

Mr. Falvo asked with regards to the property that's the subject of this application, a deck was constructed on this property. Is that correct.

Mr. Jones replied that's true.

Mr. Falvo asked and the deck was constructed over what was an approved patio on the ground level.

Mr. Jones replied what I thought was approved.

Mr. Falvo asked when you went to sell the home, was that the first time that you discovered that the deck was not permitted or had not gotten the appropriate permit.

Mr. Jones answered this is true.

Mr. Falvo said with regard to that deck, I show you several photographs and ask you if these photographs were taken by you and if you can relay to the Board on what date they were taken.

Mr. Palmieri stated I think you want to get some of them marked in so we can refer to them.

Mr. Falvo said I'll have them marked in as soon as he identifies them. Did you take these photographs.

Mr. Jones replied yes, I did. I took them Tuesday morning this week.

Mr. Falvo asked and these accurately reflect the deck and the patio which is on this home.

Mr. Jones answered that's true.

A-1 thru A-5 Photos of property

Mr. Falvo asked Mr. Jones, with regard to the application that's before this Board, you also had an asbuilt survey made of the premises. Is that correct.

Mr. Jones replied that's correct.

Mr. Falvo said and this asbuilt survey shows the existing home as well as the patio and deck above. Is that correct.

Mr. Jones replied that's correct.

A-6 Survey done by Bernard M. Collins dated 5/26/08 and revised 6/12/08 to show the zoning requirements

Mr. Falvo stated I believe this survey was also submitted as part of the application. Now, Mr. Jones, in regards to the survey in question, the deck complies with the setback requirements.

Mr. Jones replied the deck does. However, the stairs on the rear do not.

Mr. Falvo asked and the sidewalk that leads from the base of the stairs and around towards the house...a small portion of those pavers are located within the drainage easement. Is that correct.

Mr. Jones replied that's correct.

Mr. Falvo asked and the stairs and the additional sidewalk area from the stairs are what contribute to the problem as far as the setback and the amount of lot coverage.

Mr. Jones answered correct.

Mr. Falvo said and with regards to the stairs that are on the deck...is there any way to relocate those stairs.

Mr. Jones answered if the Board looks at those pictures...I can move them to either side of the deck but if you do that...on one side I'm in violation of the sideyard setback and then on the other side, I'll be running into a bay window on the back of the house...so I'm even tighter for space on that side. Either side.

Mr. Falvo stated with regards to the stairs, the plain steps...they're an integral part of the deck.

Mr. Jones replied oh, absolutely. I was very cognizant of the lot coverage...more so than anything else. That was a big magilla on this job...was lot coverage, building coverage...and we were trying to stay well within...close to the parameters...not well within because every lot was so small and tight there.

Mr. Falvo stated and with regards to these stairs, as evidenced by the pictures we submitted...the stairs really come off a cantilevered deck.

Mr. Jones said that was part of the whole design...is to not have to add any more footings, any more of the impervious structures...so I flew the platform off the back there so there was any more of that solid concrete, anything structural, there.

Mr. Falvo asked and with regard to the problem in question...and the drainage easement in particular...is there a high spot in the middle of this property which then pitches to both the south and the north sides of the property.

Mr. Jones replied absolutely. When John Chmielowicz was asking for a re-design on this job, on the approval process, he asked for catch basins backing up to the park to be located in every corner of the rear of the properties and that was the whole idea of these properties...on the perimeter of the job...to pick up any of the overflow from the lots and each one of these lots backing up had a high point in the middle and the water was shed to each catch basin on the rear.

Mr. Falvo asked and with regards to Lots 13 and 17, which are located to the east of the rear of your property...east of the drainage easement...what does that property consist of.

Mr. Jones replied that's the park.

Mr. Falvo asked and that park...how did that park come about. Was that park created as a result of the subdivision.

Mr. Jones replied in a roundabout way I'd say "yes".

Mr. Falvo asked and you were responsible to develop that park as part of this approval.

Mr. Jones replied no, not at all.

Mr. Falvo asked and with regard to the park behind you, the photographs show a treeline that appears to be on the property line. Does that separate these lots from the park area.

Mr. Jones answered yes.

Mr. Falvo asked and this park area is open space and has recreational facilities there.

Mr. Jones replied yes. It's a real nice park.

Mr. Slazyk stated I've got a couple questions. When you say "in a roundabout way" that you created the park...how did you create that park in a roundabout way.

Mr. Jones replied when we had to go for building permits, I was required to donate close to \$10,000 for each permit for the park land fund in Tinton Falls.

Mr. Slazyk stated yeah but that had nothing to do specifically with that park though.

Mr. Jones answered I didn't say specifically...yes.

Mr. Slazyk stated but you said in a roundabout way. It's really not a roundabout way. I mean there's a lot of developments that get developed with a park and there's certain requirements, whether it's a traffic light...whether it be...you know, there's certain things...there's certain concessions. Or, if you're going for property and you're actually donating...I'll tell you what. I developed a piece here in town and I gave the town 10 acres of open space but I don't say I had a "roundabout" way of doing it. They gave me based on me wanting to build the property I wanted to build. I don't know. I disagree with that though.

Mr. Falvo asked how many lots were in this development.

Mr. Jones replied 21.

Mr. Falvo asked and for each lot you contributed \$10,000.

Mr. Jones replied close to \$10,000.

Mr. Slazyk said I still disagree but go ahead.

Mr. Jones replied point taken.

Mr. Falvo stated with regard to the encroachment to the drainage area and with regard to any encroachments to lot size...no one behind you is impacted as a result of what you developed on this property.

Mr. Jones answered that's correct.

Mr. Falvo said with regard to the drainage easement or the drainage of this subdivision or of this particular lot in question...none of that is impaired as a result of the staircase to the deck.

Mr. Jones replied absolutely not.

Mr. Falvo stated and with regard to the sidewalk that comes around to the base of the deck, just a small portion of that encroaches upon the drainage easement.

Mr. Jones replied that's correct.

Mr. Falvo said but in total, you exceed the lot coverage. As a result of this, you also create a rearyard setback to the steps.

Mr. Jones answered that's correct.

Mr. Slazyk asked so the only issue with lot coverage is based on steps alone.

Mr. Falvo said and the sidewalk that apparently goes from the steps to the door underneath. The rest of the deck is over the existing patio.

Mr. Palmieri stated yeah because you can't cover it twice.

Mr. Slazyk said let me ask you another question. Is there anybody currently living in the house.

Mr. Jones replied yes.

Mr. Slazyk asked okay, so who did the pavers. You did the pavers or did the owner that lives in the house.

Mr. Jones replied I did the pavers. It's a double model paver for both the patio and the sidewalk underneath the deck.

Mr. Slazyk said okay...so let me ask you another question. They got a C.O. without getting...

Mr. Jones stated temporary C.O.

Mr. Slazyk said so you got a T.C.O. So right now, you have a T.C.O. and you're looking to get the approval based on lot coverage and all the other stuff and you're looking to get a C.O.

Mr. Jones replied that's correct.

Mr. Slazyk said at the beginning of the conversation, you stated that you were very meticulous...or I forget the exact word...you wanted to make sure you didn't go over on lot coverage during the actual construction phase.

Mr. Jones replied that's true.

Mr. Slazyk asked well, how did you go over then. I want to give you another example. Okay. I had to build a house. Okay...and I had to pinpoint it to the exact percentage in order for me to get my C.O. I had to do certain things and certain requirements. I had surveyors out there during the actual process of the building...and I didn't go over. I can't understand how you go over...without coming in for a variance prior to the actual...

Mr. Jones stated the amount I went over here is minimal. I don't know how many feet...100 square feet.

Mr. Palmieri said well, I was going to ask that same question. So you're talking about a 10 X 10.

Mr. Jones stated and I thought I even had it closer than that. I thought I hit it. I didn't ask my engineer to come out. I did it myself and I thought I hit it. Well, now it seems I didn't.

Mr. Palmieri asked Jeff, do you have any idea how many...

Mr. Rauch replied yeah, I just a quick calculation based the allowable being 31.25 percent and the actual being 35.7 percent and that comes to approximately 511 square feet.

Mr. Slazyk said so it's not 100 square feet.

Mr. Rauch replied no.

Mr. Jones stated I don't think it's 500 either though.

Mr. Rauch said well, the lot coverage for 31.25 percent would come out to 3,593.75 square feet. If you have a lot coverage of 35.7 percent...that came out to 4,105.5 square feet.

Mr. Palmieri stated it seems like for a lot this size, with lot coverage, is it that the house is so big it's using up...

Mr. Rauch replied yeah. The house is approximately 2,309.92 square feet. So the house is a little more than half the lot coverage.

Mr. Palmieri stated I know on Taylors Run those are pretty large houses. What's this...like a 4,000 square foot house.

Mr. Jones replied actually it's a 3,400 square foot house.

Mr. Palmieri stated talking about the lot coverage, I was thinking "okay"...if there were areas that could be minimized...and the question I was going to ask Jeff was with the drainage easement...when you do these calculations...I always remember you have to remove the drainage easement area as part of the lot coverage calculation...or is it allowed to be included in...because I remember this came up in Willowbrook for some reason...or the setback has to be from the easement area...

Mr. Rauch replied I'm not positive. I'll check on that.

Mr. Palmieri asked the driveway in the front...I guess that was the original size...that wasn't changed at all.

Mr. Jones replied that's correct.

Mr. Palmieri said when the house was originally built and approved, that paver walkway that goes to the front step...that was the original size.

Mr. Jones answered that's correct.

Mr. Palmieri stated so the only thing that was added, is additional...is to the rear I guess there was an existing patio originally to the rear there was none.

Mr. Jones said there was nothing there.

Mr. Palmieri stated there was just a deck.

Mr. Jones said that's correct...well, I put them all in at the same time...the deck, the patio, and the sidewalk coming off the stairs. And again, that was the whole idea with that staircase and the cantilevered platform was, again, trying to minimize lot coverage.

Mr. Rauch stated one thing on the lot coverage...you are right...the lot coverage shall be measured against those areas of the lot located outside floodways, wetlands, wetland buffer areas, utility easements, storm detention basins and related water courses and slopes exceeding 15 percent.

Mr. Hirsch said well, I don't know. This is a drainage easement. You're saying that comes under the heading "utility easement."

Mr. Rauch replied yes. Utilities are sanitary, storm, electric, gas...so a drainage easement would come under the utilities.

Mr. Palmieri stated this is like a regular sewer under there.

Mr. Rauch replied a storm sewer...yes.

Mr. Palmieri asked so the 11,500 square feet that we're saying is the lot size...not including the drainage easement...if you take away the drainage easement area...that's going to make matters worse.

Mr. Rauch said if you take out the drainage easement...the lot that you're dealing with lot coverage would be 10,120 square feet and...let's see here...31.25 percent...that would be 3,162.5 square feet that they are allowed...and at 35.7 percent which they're looking for...is 3,612.84...so the difference would be 450 square feet that they're over the lot coverage...450.34.

Mr. Slazyk asked that's an additional...or 450 total.

Mr. Rauch replied they're over 450 total.

Mr. Palmieri said based on the percentage that they're asking for...but that might not even be the correct percentage now...you're reducing the lot size.

Mr. Rauch replied yeah, that's based on their percentage that they're asking for. Yes.

Mr. Palmieri stated obviously if you're removing over 1,000 square feet on the calculation, it's going to increase the percentage of the actual lot coverage. Do you understand what I was talking about with the drainage easement. It's on your property so you can't...and I know we ran into this problem in Willowbrook because somebody was doing the same thing...the definition that Jeff's saying is the drainage easement is a utility easement and it can't be used as part of the calculation for lot coverage. You're reducing the size of your lot by this additional...so what you're asking for – the 35.7 percent lot coverage is really probably a higher number.

Mr. Jones said with a due respect in all the calculations we've ever used included...because the storm drain wraps around the whole...I'd say half the perimeter of that job...and we used those calculations for every house on the perimeter there.

Mr. Palmieri stated I agree...that's why I brought up Willowbrook because they've got the same issue going on there...obviously it came up with an application there...the same thing with lot coverage and pavers and all...when they were going through it, we noticed there was an easement that went along the whole side of the property. We said "oh, yeah, we've got to take that out as part of the calculation"...because obviously you can't use it if...I'm assuming...if they ever have to get back there and replace something...you know, if the utility collapses...the drainage utility collapses...they'd have to get in there. Where would that put us now, Jeff.

Mr. Rauch said while you were talking, I just did a quick calculation here and their calculation of their percent...they based it on the whole lot area...including the drainage easement. We have on their plan the square footage of the house plus the square

footage of the deck and the pavers...and if you add those two together, that comes out to 4,109.95 square feet...which comes out to 40.61 percent lot coverage without the drainage easement being figured in. So the actual lot coverage that they're asking for is greater by almost 5 percent.

Mr. Palmieri stated I'm assuming the original...I think I asked this question already...the size of the deck was originally there...when the house was originally built.

Mr. Jones replied correct.

Mr. Palmieri stated so that was already pre-existing with the original C.O.

Mr. Jones said actually I thought we had gone through all this because I had a super on the job at the time...and when I went to get the C.O., I had the guys through, everybody inspected and the girl says "well, I can't give it to you. You've got to give me your deck permit." I said "okay". I ran home to the file...kept looking...couldn't find it.

Mr. Palmieri stated I know we've had this other issue with C.Os...people have gotten C.Os. with houses and things...and then years later when they're selling and they do the inspection, they realize "oh" there's a finished garage that wasn't part of the original but they gave them an original once before.

Mr. Hirsch asked the raised deck is not part of the impervious.

Mr. Rauch replied a second floor deck or balcony doesn't figure into the impervious.

Mr. Hirsch said that's part of building coverage but it's not impervious...so it's only the patio that was added that increased the impervious...and the walkway.

Mr. Rauch stated the patio under it...it pretty much covers the whole area of the deck underneath...except for 3 feet X 15 feet which covers the steps.

Mr. Hirsch asked you mean the paver walkway, you're talking about.

Mr. Rauch replied yeah. They're just part of the steps which are outside...the pavers below the deck...so that's only 45 square feet...of the deck that's not...

Mr. Hirsch asked are those steps adding to the impervious...or just the building...because I thought we weren't counting any part of the deck or the stairs as part of impervious...only the patio is part of the impervious.

Mr. Rauch replied right but the area under the deck is all impervious because of the paver patio.

Mr. Slazyk said no...if the pavers are gone...isn't that what you're asking.

Mr. Hirsch stated I just want to make sure. I thought the way Jeff was doing that he was including the steps...you know the 45 feet...as part of the impervious. I thought

that was the point he was trying to make but I thought that the steps would not be included...we'd only be calculating the pavers...patio and walkway pavers, obviously they're part of the impervious.

Mr. Rauch replied that's correct. Yes.

Mr. Hirsch said the only minor thing...well, I don't know if it's minor or not...I would point out...if the Board is willing to grant variances for the coverage and the setback...the Board can't grant a variance to allow structures within the drainage easement. It's not part of the zoning ordinance. I mean it's not a variance...in other words if this was the developer, when they did the map, I guess, in front of the Planning Board, they would have indicated an easement and then given a deed to the Borough. That's a property right of the Borough in terms of what goes into the easement. The Board has no jurisdiction over that...but the Board has within its jurisdiction...whether it wants to or not...it has within its jurisdiction the right to grant a setback variance and a lot coverage variance...but by granting the setback variance...it doesn't mean that you then have a right to put structures within the drainage easement. You might have to get some kind of waiver from the Council...because the easement runs to them, not to the Board. I mean we have no say in that. And even if it was a condition within the resolution, it would have been a Planning Board resolution, not this Board...so while they can treat the variances, coverage and setbacks...they really can't deal with the fact that the structure is within the easement. Now the steps I'm not quite clear. I mean, they're raised, I guess, going up but maybe the foundation of the steps might be partially in the easement and there's obviously a very small portion of the pavers in the easement. It doesn't look like a big deal. It's just that I don't think we have any jurisdiction.

Mr. Falvo stated well, to the extent that we'd have to go to the Council to get their consent, I mean that can be a condition.

Mr. Hirsch said yeah, that's what I'm saying. I'm just pointing it out so that nobody got mislead that if they were to grant a variance, that means it's okay to put something in an easement that we don't control.

Mr. Falvo replied I understand.

Mr. Rauch stated one of the issues with the encroachment of the easement is that if there's ever maintenance on it and they have to go in and dig up and uncover that pipe, most likely those stairs with the footings or the foundations for those stairs are going to get wiped out. And it becomes an issue does the town have to pay, or the Borough have to pay for the removal and the reconstruction of the stairs.

Mr. Hirsch said well, I think two things. One, I think it's probably unlikely that that would happen because the pipe, I don't think, is going to be anywhere near where the stairs are. But even if that were so, that's why we're saying you've got to work that out with the town. Do you follow me. If the town's willing to do it, they may say "well, fine, but" on the condition that if the stairs do have to be removed, they're at your cost and expense...so the Borough could protect itself...if they were willing to give that waiver at

all...or change the terms of the easement. That's why I'm saying that. When you've got a 15 foot wide easement, you know...it probably wouldn't be impacted but it's not our business is what I'm saying. We're directing ourselves at the setback variance...if you were to grant it...you know, on the basis there's a park behind it and it doesn't affect anything...but that would be subject to the Borough agreeing...the Borough Council being willing to waive any and all rights it has as to having any structures within the easement area...and we can't control that. That's the setback issue. The coverage issue is sort of the same thing. We don't want the suggestion that if you were to grant variances, that that waives any of the requirements concerning structures in the easement.

Mr. Palmieri asked Mr. Falvo, on the original Planning Board resolution, was there anything specific that is addressed with these properties saying that...you know, relating to lot coverage. Because I know the area over there...a lot of those houses are very large houses on very small pieces of property. We had issues before with the fences...where they're supposed to be...

Mr. Falvo replied Mr. Palmieri, I don't know. I mean I didn't handle the matter before the Planning Board. I haven't looked at the Planning Board resolution but we can do that. I mean I know there are other homes in the area that are building or have gotten permission to build patios or decks that weren't part of the original house.

Mr. Palmieri said some of them are nice. I've seen behind the houses. They're doing a great job. I don't know if there was something special that was granted. I don't know if you remember anything that was granted special about lot coverages and the size of the houses that were built and what would be allowed to be available to add on to the properties.

Mr. Jones stated that was the main battle was the lot coverages and the size of the houses. Anything past that...we were just glad to get beyond it.

Mr. Palmieri said because you're absolutely right. It's a small lot with a very large dwelling on it so I'm wrestling with the idea of what you did. It looks great and I know you've tried to stay within...like you said...within your lot coverage requirement. It's just like anything else...especially in a small development of 21 homes...that if something like this was to go forward...and I could see it happening with all the lots this size...especially the ones that are in the inner part of the circle area there...where the houses are extremely close...of saying "Well, the guy across the street got it. Why can't I get it." And I'm not trying to pick on you on it. It's just that we're trying to come up an idea what can conform and what can be made to work here. And obviously you've been through the process more than most people...the Board has to look at these plans, even though it's asbuilt...we're not supposed to let that come into our thought processes, which we do, obviously when we see the pictures that you put together...but we're supposed to look at it as if it's not built and how does it fit on the lot. And I'm wrestling with the whole idea of lot coverage and the size of the dwelling and what you've already constructed...and even to try to say "Take away 500 square feet"...that's basically taking away that whole back patio, I would imagine. You know.

Mr. Jones replied almost.

Mr. Palmieri continued and then the other issue...

Mr. Slazyk interrupted saying but that 500 feet is on the low end of things too...based on the easement.

Mr. Palmieri replied yeah, based on the recalculation of the easement.

Mr. Rauch stated based on the new calculation of the easement...instead of 35.7 percent...they're actually looking for 40.61 percent.

Mr. Palmieri said which is a big number. You know, usually I tell applicants when we get to a stage like this, you want to think about a Plan B. I know we have everything built already and I know you're in the midst of looking to get your C.O. approval. I don't know...do any of the Board members have any questions about anything you've heard so far.

There were no questions.

Mr. Hirsch asked you have a copy of Feist Engineering's report.

Mr. Falvo replied yes...and we looked into the issue of relocating the steps but depending on how you handle the calculation, you'd be removing a portion of the deck and a portion of the patio...and the steps, if you look at the pictures of the home...the steps, if you put them on one side within the setback area, would dead end into the overhang for the picture window...or dead end under it. And if you put it on the north side, it would encroach somewhat into the setback area.

Mr. Palmieri said the side setback. Right.

Mr. Falvo stated the side setback...into Lot 14.06.

Mr. Rauch said with regards to the stairs, have you looked at taking the stairs from the south end of the deck and instead of running it along the deck, running it out from the deck...so that it's parallel with the house. You wouldn't have any interference with the bay window out there. Instead of running it along the side of the stairs of the deck, you run straight out so that it's perpendicular to the deck, the stairs, and it's parallel to the house.

Ms. Oltman asked do you mean underneath the bay window.

Mr. Rauch replied no. You basically would be running right along the easement line straight out from the deck

Mr. Palmieri said going towards Lot 14.04

Mr. Rauch replied yes.

Mr. Palmieri asked and I'm assuming that the paver patio that you've got back there...that runs around that bay window. Is there a door on the other side of the bay window. That's why you've got pavers going out that far that way.

Mr. Jones replied it's a walkout basement.

Mr. Falvo stated we're going to have to get back to our engineer...because what we're thinking is perhaps if we just took out the paver sidewalk that goes from the end of the deck to the house...that may reduce the degree of impervious coverage.

Mr. Hirsch said I'm saying, Peter, I didn't quite hear.

Mr. Falvo stated in other words, if you look at the survey...if you remove the sidewalk, or the pavers, that go from the last step back towards the house...

Mr. Hirsch said the round part there.

Mr. Falvo stated exactly...I mean we'll get our engineer to recalculate and find out how much that reduces the impervious coverage.

Mr. Palmieri said and your thought process about moving the stairs...or you'll wait to see if something...

Mr. Falvo stated we'd like to wait and see. Actually the only part that touches the ground, as you can see from the photographs, is the bottom steps.

Mr. Palmieri said well, I was thinking more of if you would wait to go...before moving the stairs...to go in front of Council to request that the stairs could be left there.

Mr. Falvo stated well, obviously we'd have to go to Council to see if they will allow the encroachment...but we can do that and recalculate the percentage of impervious coverage that would be reduced by the removal of that sidewalk area.

Ms. Oltman said the problem with that is if the stairs remain, it's still within the wide drainage easement.

Mr. Falvo replied well, that we'd have to go to Council for. We'd have to go to Council to see if they would permit that.

Mr. Palmieri said yeah, that's Council's call on that.

Ms. Oltman stated I know. I understand.

Mr. Palmieri said I guess, Mr. Falvo, you've got to go back and talk to...like you said...talk to your engineer and figure it all out...and then maybe come back in front of the Board.

Mr. Falvo stated the only thing...we'll do that. We'll come back in front of the Board...but the one item I think that Jeff and the developer are in agreement on is that the steps do not impede in any fashion the functioning of the drainage easement. I mean we're not stopping the drainage. We're not impeding the drainage.

Mr. Palmieri asked do you agree with that, Jeff.

Mr. Rauch replied I went out there and looked at it and I reviewed it. What's constructed there doesn't impede the flow of the stormwater to the inlets. There's no issues created from this...from a drainage and stormwater standpoint.

Mr. Falvo said fine. If you want to give us a new date that it will be carried to, we get the information in the interim.

Mr. Slazyk stated I just want to make a comment real quick. Even if you remove that small amount of pavers, okay, in that area...just come back with your right calculations because right now you've got 40.6 percent that you're looking for lot coverage.

Mr. Jones said you changed again a little bit though.

Mr. Slazyk stated I'm not changing it again.

Mr. Jones said 4 or 5 years ago when I went for the approval on this job, we always used what we had in the code and nobody ever said anything about drainage easements.

Mr. Slazyk stated I'm not changing the game. Okay. The game is that we have a zoning ordinance. Okay. We have part of this that we have to follow and that's the game that we have here. Now, if you came in with something different or you have something from somebody in the Planning Board that states that, that's great. Bring it in...but right now, we don't see that. We're not changing the game. We have a game here that we have to play by and when you build a house, you have a game that you have to play by. Okay. And, to me, it just doesn't really meet that.

Mr. Falvo said Mr. Slazyk, I think the difference here...and I'll have to go back to the resolution of the Planning Board...is that at the time they developed these, as I understand Mr. Jones, the drainage easement was not excluded from the square footage of the lot in computing your coverage.

Mr. Slazyk stated all I'm asking for is...bring something over that states that...that shows it.

Mr. Falvo replied right. I've got to go back and look at it. Exactly.

Mr. Slazyk said that's fine.

Mr. Hirsch stated that would be part of the record if he built a certain coverage based on the full size of the lot without taking into account the loss of the easement area...you

know, might be part of a hardship if that's what was permitted at the time. Anyway, we need to get that whole history so we have all the facts.

Mr. Palmieri opened the floor to the public for any questions pertaining to the Jones matter. There were none.

The Board and the applicant agreed to carry the Robert Jones matter to November 6, 2008.

DAVID & MIMI KEENAN 69 SQUANKUM ROAD VARIANCES FOR REARYARD SETBACK & OVERSIZED DETACHED GARAGE RE-SCHEDULED FROM AUGUST 21, 2008	BA 2008 – 23 BLOCK 106.07 LOT 14.01
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David Keenan, the applicant, came forward.

Mr. Hirsch pointed out that the applicant had noticed in the newspaper too late for their previously scheduled hearing and had to re-notice in the Asbury Park Press for tonight's hearing. The previous notices to property owners had been done in a timely manner however. Mr. Hirsch advised he had reviewed the affidavit of publication and proof of service and now found them both to be in order as to form.

A motion to accept service in the Keenan matter was offered by Mr. Porzio and seconded by Ms. Oltman. A voice vote in favor was unanimous.
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Mr. Palmieri asked the applicant to explain what brought him in front of the Board this evening.

Mr. Keenan stated first I'm sorry that I have to bring this in front of you folks but I need a variance for a detached garage that I put on my property...which turns out to not adhere to..I guess they call it a setback...it's about how far away from the property line it has to be. It turns out that it's too close in the back...to the back property line.

Mr. Palmieri said okay. Let's try and get some stuff on the record here. Looking at the survey...it's dated March 25, 2005...and it shows your property on Squankum Road. This is an asbuilt survey and this building's been up since 2005. Is that correct.

Mr. Keenan replied I think so.

Mr. Palmieri said just so we can get some things on the record here...if I'm standing on Squankum Road and I'm looking at your property from the road and we're talking about a detached garage to the rear...directly to the south of you or the rear of you...I don't have any number of the lot but what is actually directly behind your property.

Mr. Keenan asked in terms of lot or geography.

Mr. Palmieri asked what is it...I mean is there a house back there.

Mr. Keenan replied there's a house that was built on a lot that was sort of an island lot back there.

Mr. Palmieri asked how far would you say that house is from your common property line. Do you have any idea.

Mr. Keenan replied 40 feet...50 feet. There's a line of woods between my property line and the start of the open area for that house.

Mr. Palmieri asked how far would it be, say, from your property line to that house.

Mr. Keenan replied I would estimate 40, 50, 60 feet. I have no idea. I've never thought about measuring it.

Mr. Palmieri said currently this garage is built and, based on the survey that you have here, saying it's 1.6 feet off of the property line at its closest point.

Mr. Keenan replied one corner is. Right. The property line is very angled back there...the other back corner is 8 feet or something like that and this back corner is 1.6.

Mr. Palmieri stated according to your survey, the furthest most corner of the garage is 10.16 feet and the closest point is 1.6 feet.

Mr. Keenan replied correct.

Mr. Palmieri asked also looking at your property from the street, and if I was looking to the left, which is Lot 15.01, is that house also on Squankum Road.

Mr. Keenan replied yes, it is.

Mr. Palmieri asked and how far would you say that house is from your property line.

Mr. Keenan replied maybe 15 feet. On the side of me it's close.

Mr. Palmieri asked in going in the other direction, going towards Ruffin Court, the house that's on 6.08...how far is that house or is there a house there.

Mr. Keenan replied there's a house there but there's a big lot...I have a big open lot between my house and that house on the corner...

Mr. Palmieri said from your common property line because obviously the side of your lot is very large on that side.

Mr. Keenan stated from the property line on that side to that house is probably 25 feet. I'm guessing at all these numbers.

Mr. Hirsch replied we understand.

Mr. Palmieri said this is just to get an approximate idea to know what's going on around your property.

Mr. Keenan replied okay.

Mr. Palmieri asked can you just go into a little bit of history about how the shed...who built it. Did you have a contractor build the shed for you.

Mr. Keenan replied the garage. The garage is like a pre-fab pole barn and I had a couple kids build it...that knew how to do that...and I did not want it to be where it ended up. It was my mistake.

Mr. Slazyk asked did you get a permit prior to building it.

Mr. Keenan replied absolutely. I got permits. I followed all the processes as far as I understood how to do it.

Mr. Slazyk asked how did you build it...

Mr. Keenan said in the wrong place.

Mr. Slazyk replied yeah.

Mr. Keenan stated this is going to sound pretty stupid. I marked the corners for them and I was marking the rear corner and they thought I was marking the front corner and so when they poured the footings, they put these tubes in the ground that the poles go into...they did that from the markings back. So it ended up 24 feet closer to the property line than I wanted it to be.

Mr. Slazyk asked why did at that point once they did the footings because you had the footings prior to building the rest of it.

Mr. Keenan replied no. We didn't have the footings inspected. I didn't have to do that.

Mr. Palmieri said I guess the real question is if you're the homeowner and obviously you're there watching them do this.

Mr. Keenan replied no, I wasn't and that was part of the problem. I wasn't there.

Mr. Slazyk repeated you have to have the footings inspected.

Mr. Keenan said I had all the inspections done that I was asked to have done. I don't recall whether we had a footings inspector...

Mr. Hirsch stated maybe the town didn't do it. On a structure you're supposed to.

Mr. Slazyk said this is a structure.

Mr. Palmieri stated on decks and all that stuff you've got to call up for a...

Mr. Slazyk asked you have a poured slab in here. Correct.

Mr. Keenan replied yeah, just the slab. I have all the building inspection things. I did whatever I was asked to do.

Mr. Slazyk said I mean they're not coming out to look at the measurements. When they come out, they're looking at a footing. That's all they're looking at.

Mr. Keenan replied yeah. I would doubt that they would sit there and try to look at the survey.

Mr. Hirsch said what you're talking about is getting a foundation survey. That's different. That's when they do the foundations of a house. They come out and survey again to make sure the setbacks are appropriate before they go any further.

Mr. Slazyk stated the town doesn't do that. The surveyor does it. You've got to do that yourself. That's your responsibility. It's not the town.

Mr. Hirsch said most towns require it. Yes.

Mr. Slazyk stated yeah, most towns require it. Right...but a surveyor does it, not the town.

Mr. Hirsch said no, the town doesn't send out its own surveyor. No.

Mr. Slazyk stated correct.

Mr. Keenan said I have enough land. I certainly didn't want to go down this path. There was no point for me to do that on purpose. I screwed up. I'd never had a thing built before and didn't understand.

Mr. Palmieri stated obviously you were here for the previous application. In a similar sense, he's got an asbuilt. You know, we try to look at these things as they're not built and I know the homeowners who have been here before...they go to expenses in building things and obviously we can't go through the process of saying...like you're saying you made a mistake and then okay...even though we do feel for the homeowner...we can't go through and say "Alright, you built it. We'll let it go." If this was before the Board as it is currently, I can't see a reason why unless there was something with your property or some hardship that said "I can't put the garage in any other spot but here and I need to have a garage." Like you said, you've got a large piece of property. I know you've got this thing already built but I can't see how we can have something go forward with the garage being right on the property line. I mean, I know we've got sections of the town where the lots are very small and buildings have been built 40 or 50 years ago where this wasn't an issue...but I could see if they built your whole house and messed up...that would be an extreme hardship.

Mr. Keenan said well, it will be a hardship to me if I have to move the garage. You know. It was a hardship to be able to build it.

Mr. Palmieri replied well, that would be more of a financial hardship as opposed to a hardship based on the property's topography or other things related to it.

Mr. Keenan said okay. I understand.

Mr. Hirsch asked your current setback is 20 feet for the garage. I mean the rear yard setback.

Mr. Palmieri replied yeah. Like you said, you originally put the stakes out 24 feet from where the property line was and they went ahead and built it...I mean the question also I'm asking is...in the process and the length of time it took to build this...and you said you weren't around to inspect this or you weren't...

Mr. Keenan replied well, I don't want this to sound like the dog ate the homework...I honestly didn't see it until I...I was in Brazil, believe it or not, working. So when I got back I knew right away but at that point I didn't know what to do...and I couldn't afford to have them put it all out and move it up. And I also thought I still had enough room to the back...but the property line is a lot more angled there than I thought. So, I wasn't sure what my options were.

Mr. Palmieri stated not knowing who the property owner is behind you...I don't know if purchasing land from the person behind you...say 20 feet. I don't know if that's doable. I don't know how any of the other Board members feel...just looking at it as if it wasn't built...I know it is...I mean this is not a good place for a garage.

Ms. Madzin said I have a question. As you mentioned you weren't home when this was under construction. Was there no one there on your behalf overseeing what was going on.

Mr. Keenan replied no.

Mr. Hirsch said just the builder.

Mr. Palmieri stated I guess the people who constructed it, you said, were two guys that wasn't a real construction company.

Mr. Keenan replied yeah, they were just a couple kids putting up...because it was cheap.

Mr. Palmieri stated it's not an expensive thing to construct.

Mr. Keenan said except if you have to do twice.

Mr. Slazyk stated the problem is...I mean it's a big problem...on our behalf. I mean if we sit here and allow this thing to go...I mean...you know.

Mr. Keenan replied I understand. There are 6 garages on my street that are the entire garage...one wall...or the wall in the back are this close to the property line. And these are with houses on either side. Mine is butting up to basically woods. But I understand your point.

Mr. Palmieri said then we run into the issue like the previous application...goes to sell the house and if there's something that's not conforming or in a drainage easement like you heard before...they're going to end up in front of us anyway.

Mr. Slazyk stated they'll knock it sooner or later if it was illegally built.

Mr. Palmieri said yeah.

Mr. Keenan asked even if it has a variance.

Mr. Palmieri stated well, that's only because they came in front of the Board here and they had hardship or something like that...that the reason why it was built.

Mr. Slazyk asked was it built 30 years ago or 40 years ago...because I guarantee it wasn't built in the last 12.

Mr. Keenan asked what...the other garages.

Mr. Slazyk replied yeah.

Mr. Keenan said oh, I don't know. I just looked when I drive down the street.

Mr. Palmieri asked if the Board members had any additional questions. There were none.

Mr. Palmieri said okay, now what I'm going to do is open it up to the public to see...because I know there was a gentleman here from last time.

Carl Marino, 1 McNemany Place, Block 106.07, Lot 11, advised our lot is the one that's in question here. We're behind the Keenan's property. We are the property where...

Mr. Palmieri said the common property where the garage is.

Mr. Marino stated right. My question is when did you...what day was it that you first knew that the garage was in the wrong place.

Mr. Keenan replied I don't recall what day it was.

Mr. Marino asked when did you get back from Brazil.

Mr. Keenan replied I don't recall.

Mr. Palmieri asked how long has the garage been built. How long has it been up.

Mr. Keenan replied approximately, I think 2005. 2004 or 2005. I honestly don't remember.

Mr. Marino said really most of the rest of what I have is testimony. I need to speak more than ask questions. That would be easier for me to do.

Mr. Hirsch asked Mr. Keenan do you have anything further to add before we swear in this witness.

Mr. Keenan replied no.

Mr. Hirsch swore in Mr. Marino.

Mr. Marino stated unfortunately the garage is not close to my property line. The garage is on my property. Two years ago my wife and I had an addition put on the house and we built our house ourselves. I G.C.d the house myself and I also G.C.d the addition. So when we were putting the addition on, I knew that I couldn't be any closer than 25 feet to the side property line where the addition was going to go so I decided to have my surveyor come out and do a full stake-out, dig up the markers, come out with your transits survey of my property. That was in 2006. When he did that, that was when I discovered that the Keenan's garage was on my property...and I approached them several times and said "we got to do something about this" and nothing resulted out of that. So I ended up going to the Zoning Board to Lori Paone and it was then when I complained to her that she sent out a letter to them saying that they realized that final zoning had never been approved and they weren't going to approve. Subsequently in August of this year, just to be absolutely positively certain, I went out and had a new survey drawn with everything marked and with the garage showing on my survey. You'll notice on Mr. Keenan's survey that its corners were waived which indicates to me that they didn't come out and re-survey the whole property. They just added the improvements to an existing survey. My survey here is a survey of the entire property. They came on my property. They dug up markers. This is a complete certified survey that was done in August of this year and it shows that his garage is actually 4 inches over the property line.

Mr. Rauch said if I may, Mr. Chairman, the waivers of the corners does not mean they didn't survey the corners. All it means is that they signed a waiver saying that the corners, the monuments...they're waiving putting the monuments in at the corner. It does not mean that they waived the boundary survey or anything. When they did the survey of the property, they located it...all that waiver has to deal with is if there's not a marker at the corner, that the homeowner did not want to have a marker put in. That's all that is. That's State law.

Mr. Hirsch stated I marked the survey as O-1.

O-1 Mr. Marino's survey of his property.
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Mr. Hirsch said just so we get this straight and we don't waste too much time on it...you know, if there's a dispute between surveyors and property owners about an

overlap of property, that's, of course, a property right and a property argument between the property owners. The Board, even if it's inclined to grant a variance, obviously cannot grant a variance to permit something to go over a property line. So the most the Board could do, under any circumstance, would be to grant a variance to allow it to be 1/10 or whatever decimal of an inch on the owners side of the property line. Alright. You don't have a right to go over your property line. So, the Board's not going to be here to decide whether it does or doesn't encroach. It's really not an issue for the Board to decide that. The Board is here to decide whether the variance should be given at its closest point...according to the applicant, it's 1.6 feet. Just assume that the Board granted a variance for 1.6 feet. That doesn't change the neighbor's right to contest the fact that "well, it's closer than 1.6 feet". If he had a variance for 1.6, that doesn't mean that if, in fact, it is over the line, he can leave it there. He would have to move it to be 1.6. Okay. So whatever variance you grant would not affect the other owner's property rights to claim that the garage is even closer than that. I just don't want us to get confused with the two different issues...the variance issue and a property right issue between neighbors. Go ahead, sir.

Mr. Marino stated the first choice that was made wrong by the Keenans was by not having a...when you build something, you have an engineer stake out where your foundation is going to go. He stakes it and then you pour your footings and that way you know it's in the right place. You have your surveyor stake it out. That's what I did. That's what most people who build...that's what you do. That's what you should do. They chose not to do that.

Mr. Palmieri said you'd be surprised.

Mr. Marino stated okay. Let me say...that's the right way to do it.

Mr. Palmieri said the applicant before him was a professional builder. I don't know if you were here for that one.

Mr. Marino stated I know Bobby Jones as a matter of fact. That is the right way to do it. That wasn't done. Then a foundation location survey was not submitted and I happen to have here a copy of their building construction permit which shows that a footing inspection was done on March 11th of '05 and a final framing inspection was done on March 23rd of '05 but the foundation location survey is not dated until March 25th. So the building was actually constructed complete prior to the foundation location survey ever even being taken. So he had choice after choice after choice to correct the problem and chose not to do that. He's known since 2006 when I approached him that the building was on our property or certainly by his survey, close to our property. He's had every ample opportunity to have another surveyor out to contest my surveyor's findings. He's had two years to do that and he's chosen not to do that.

Mr. Hirsch said excuse me. Can I interrupt you for a second. There was a foundation survey on what did you say...March 25th.

Mr. Marino replied that's the survey that you have...the asbuilt dated March 25, 2005.

Mr. Hirsch said alright. That's not a foundation survey. That's an asbuilt.

Mr. Marino stated that's what was submitted as his survey.

Mr. Hirsch said alright. Well, alright. I thought there was a separate foundation survey but not just the asbuilt. Alright, go ahead.

Mr. Marino asked should I submit a copy of the building construction permit that shows that the framing inspection was completed on the 23rd, yet the survey's not dated until the 25th.

Mr. Hirsch said you're free to submit whatever you want. I don't think it's terribly relevant to the issue before the Board.

Mr. Marino stated I mean clearly this variance can't be granted. I do want to submit one other thing and these are photographs I took today which presents me with a liability issue. This is the rear of the garage from my property facing the back of the garage and there are trees on the edge of my property that are near his garage. Well, in a storm a while ago, one of the trees...the top of the tree came off. Now it fell, fortunately for him and for me, on my property. But had that tree fallen on his garage, I would have been liable for that. And, if the garage was in its proper place, the tree couldn't have fallen anywhere near the garage. These photos show that.

O-2 Photograph of Mr. Marino's property looking at rear of Keenan's garage

O-3 Photograph taken from Mr. Marino's property showing tree broken off

Mr. Marino said I also have a copy of a letter that was sent out to the Keenans dated March 16, 2005, from Lori Paone, that says the foundation location survey had not been submitted as of that date...on the 16th of March.

O-4 Letter dated 3/15/05 from Lori Paone to the Keenans

The Board members advised that they already had that letter included in their package.

Mr. Marino continued saying clearly there have been multiple opportunities at a very early stage in construction to resolve the problem that they chose not to do. Now, is it not within the power of this Board to require the garage be moved or is within the power...I know you can or can't grant the variance but...

Mr. Hirsch said no. This Board is not the Board that has the enforcement powers. If the Board does not grant a variance, then the structure is in violation of the ordinance and then it's the Code Enforcement Office that has to take action or not. This Board does not take any enforcement-type action. It's essentially an appellate board that just will make decisions on whether to grant or deny a variance.

Mr. Marino replied okay. The only other thing I would like to call your attention to, and I'm sure you're aware of this, on the back of the construction permit there's a

certification oath that an owner/builder has to sign that says "I understand that in marking box that I am assuming responsibility for the work done on said property, the condition of the property prior to, during, and after any work performed, and for the performance of the subcontractors I hire, employe, or otherwise contract, or with who I make agreements to perform work, I am voluntarily and knowingly assuming this responsibility." Now he had to check that box when he applied for the construction permit and had to accept that responsibility, so the only place the responsibility lies is on Mr. Keenan.

Mr. Palmieri said usually when we have situations like this where things like lot coverage and setback problems, when there's property around...large pieces of property...one of the things we would ask the applicant if he make inquiries from any of his neighbors to purchase any property, if there's any available, to help alleviate the problem. So I don't know if you had approached your neighbor about...because obviously...

Mr. Keenan replied I offered to give Mr. Marino a triangular shaped piece of my property in exchange for a triangular shaped piece behind the garage...in other words straighten out the property line behind the garage and I would pay for the survey changes and everything...I offered to do that...because the way that the property line slants, I don't use a large pizza shaped piece on that left side and I offered to swap that but he was not interested in doing that.

Mr. Marino said well, because, essentially, he was offering me a useless piece of property. I mean there really is not acceptable solution in my and my wife's opinion other than to move the garage. The construction permit shows the total cost of construction at \$10,000...so to move the garage, you talking about less than half that. It's not a major expense.

Mr. Palmieri stated the only thing I can say about that is for one person what's expensive and not to another is not our issue here. We have to look at what the building is, where it's at, and deal with it that way. If it was a cinderblock building or something, yes. That costs more but that's not the issue for us. The issue is the location of it and the violation.

Mr. Marino said so the issue is right and wrong...is what you're saying. Okay. I would agree with that.

Mr. Palmieri asked do any of the Board members have any questions about the testimony given.

Ms. Oltman asked it doesn't appear in those pictures that there's a fence back there on the property line.

Mr. Keenan replied there is not. There's a fence far from the property line extending from my garage to the right. There's a photograph in there that I submitted.

Ms. Oltman said I saw that before. I was speaking more about the back of the property.

Mr. Marino stated his yard is fenced in. Our yard is not.

Mr. Palmieri asked does the public have any questions of the testimony. There was no public left.

Mr. Palmieri asked Mr. Keenan, is there anything else you would like to add.

Mr. Keenan stated I have had another survey done to assure myself that the garage is on my property...so I had my surveyor contact the other surveyor, get whatever surveyors get between each other...the points or data or anything...and re-calculate, re-survey the property, using that additional data and I have another survey that indicates that the garage is still on my property. It doesn't change the fact that it's too close to the property line but I just didn't want you to think I just have not paid any attention at all to this. I have.

Mr. Marino asked where is that survey.

Mr. Palmieri said the question was do you have that survey on your or...

Mr. Keenan replied yes, I do.

Mr. Hirsch asked what does that survey indicate the proximity of the garage is...the same 1.6 feet that you showed on the other survey or does it change that calculation.

Mr. Keenan replied it's changed it.

Mr. Hirsch asked to what.

Mr. Keenan replied 9.15 on one corner and 0.63 on the other corner. So it changed it but it's still on my property.

Mr. Hirsch said okay.

Mr. Palmieri asked and you're saying that the two surveyors contacted each other and they were both...

Mr. Hirsch said well, it doesn't matter. Let's not get hung up on that. That's why I told you that stuff earlier. The point is we're not going to decide that tonight...based on the relief the applicant would be requesting as he understands it...it would be a variance to allow the garage at its closest point to be .63 feet from the rear property line...and at its furthest point it was 9.15. Okay. That's the relief before you. If you were to grant...okay...they can fight to whatever...the neighbors, when I say they...and if it's determined that if you grant that variance but the garage is closer than .63...well...he doesn't have a right to have it closer than .63...so we don't need to get into who's right or wrong on that survey...as far as I'm concerned.

A motion to close the public portion of the Keenan matter was offered by Mr. Porzio and seconded by Mr. Slazyk. A voice vote in favor was unanimous.
A motion to deny the Keenan variance was offered by Mr. Slazyk and seconded by Mr. Porzio.

ROLL CALL

Yes: Messrs. Slazyk, Porzio, & Palmieri and Meses. Oltman & Madzin

No: None

Abstain: None

JAMES & NANCY POWER
27 ANNAPOLIS STREET
VARIANCES FOR POOL, SPA, WALKWAYS & LOT COVERAGE
CARRIED FROM SEPTEMBER 4, 2008

BA 2008 – 26
BLOCK 124.56 LOT 24

The applicants, **James & Nancy Power**, came forward.

Mr. Hirsch explained this case had been carried after we heard some testimony. Mr. Power was sworn in at the previous meeting. The applicants' engineer, David Boesch, Nelson Engineering Associates, Wanamassa, was sworn in by Mr. Hirsch.

Mr. Boesch advised I am here tonight as the project engineer and the site designer. After the last hearing, James & Nancy Power came to me with the documents that they had in their possession to try and see if I could come up with a site design that could alleviate as many of the variances that were being sought as possible. With the information they provided, it gave me a little bit of a history of the property which I think may be helpful to the Board. They purchased the property back in July of 2002 and I have a copy of the survey that was prepared for that transfer of title.

Mr. Palmieri said we don't have any other evidence, do we.

Mr. Boesch replied no other documents were submitted prior.

A-1 Survey prepared on July 12, 2002

Mr. Boesch said the reason I bring this to the Board's attention is to show what the conditions were of the property at the time that they purchased the site. More importantly, to show that once we inputted this information into our computer, it showed that the property at that time of the purchase was already in a variance condition from an impervious surface coverage perspective. I'll come back to that later but I just wanted to bring that to you first and foremost.

They were notified of the violation this year by Ms. Paone and notified to come before the Board to seek variance relief. They had submitted a survey that they had done at

that time showing where the improvements that they made since they moved in...what the physical condition is...identifying the variances that were being sought as part of this proceeding. They included a new shed that was in violation of the setback requirements, a spa that was in violation of the setback requirements, and patios around the pool and spa that were also in violation. Taking all these factors into account, they asked me to come up with a design to #1 – eliminate as many variances as possible, and #2 – maintain their program, shall we say, the uses that they wanted to accomplish in their backyard while having minimal impact on the zoning ordinance or the surrounding properties. So that's what I have is another map to provide the Board called "Proposed Site Conditions."

A-2 Survey showing proposed site conditions

A-3 Aerial photo from Monmouth Count GIS website – dated late 2002

A-4 Blow-up of rendered version of A-2

Mr. Boesch stated I wanted to inform the Board of what the property conditions were back at the time of the purchase so that you can see what the Powers have done to improve the site although, yes, variances are required for it, there are significant improvements to what they have done vs the conditions they experienced on the date they moved in. Referring to A-3, what existed on the property at that time, other than the main dwelling and the pool which are relatively clear from the aerial photograph, there was also a wooden deck on the west side of the house. There was also a kennel and a dog run on the east side of the house. There was also a shed in that general area in the side yard. So we wanted to bring that to your attention that the shed and kennel were an existing violation that occurred at that time...and also seeing the relative location of the pool patio to the property line, and the pool itself was an existing violation at the time of the property purchase.

Mr. Hirsch asked the pool itself and the walkways were all in violation of the ordinances in 2002 and the setbacks and coverage.

Mr. Boesch replied that's correct.

Mr. Hirsch asked so the wood deck, the kennel, the dog run and shed...they were all removed...that you referred to that were there in '02. That was your point...that they were existing conditions that were improved by removal.

Mr. Boesch replied correct. So that will go to our impervious surface evaluation at the end of my grand finale, so to speak.

Mr. Hirsch quipped we can hardly wait.

Mr. Boesch said so where the pool is required to be 12 feet from the rear line. It was and is just a little bit over 9 feet. Those are conditions that we're not looking to change. The patio...calling it a "patio" is a little bit elaborate...the concrete ribbon that was around the pool is required to be 9 feet from the property line...was more in the

neighborhood of 6 feet. The shed, although one shed was removed, another shed was constructed and was constructed over top of a drainage easement. The Powers have already relocated that to a conforming location. I have a photograph taken by Mr. Power...two photographs showing where the shed was at the start of these proceedings and where it is today.

A-5 Photo of shed before hearing

A-6 Photo of shed relocated outside of drainage easement

Mr. Hirsch asked okay, the shed is outside of the drainage easement but is it in conformance with setback requirements of the ordinance.

Mr. Boesch replied yes, it is. I'm sorry I have another photo which shows it is also three feet off the rear line.

A-7 Photo of shed showing setback

Mr. Boesch stated so essentially the Powers wanted to show good faith and bring the shed into conformity. That's something that, without question, they wanted to do and have done while we discuss the other issues that remain. What the Exhibit A-2, which I'll be referring to as A-4, are the additional changes that the Powers would like to do to bring the property into greater conformity, although not complete conformity, with the setback issues surrounding the patio and the spa, since now the shed issue has been removed.

You may recall that the original spa location was right on the eastern fence line. What the Powers would like to do...not that they'd like to do it but it's a negotiated point that we're getting to...is to move the spa...instead of being along the fence line to move it along the house line. It doesn't get to 12 feet from the property line. It does get it to, I believe, it's 8 feet...9 feet. The reason for that specific location is the sliding glass doorways to the kitchen are located on the east face of the building. It provides a convenient access so they can gain year round use of the spa without having to run around from the door to some area of the property that would be a conforming location. It also provides a great deal of privacy...or a greater deal of privacy for them. I'm referring now to A-3. The neighbor immediately to the east only has windows on the first floor in that area. On the second floor, there are no windows...so the fence provides a great deal of privacy for any use of our eastern yard. If the spa were located to the rear of the property, all the windows from the second floor of all the homes to the south of us have a very nice view of the back yard...which might even be evident from some of the photographs showing the shed location. So it's for privacy reasons #1 and what we refer to as ergonomic efficiency...the fact that the door is right there. It's into the kitchen. There is another door on the west side of the house but that's from the living room...so coming out of the hot tub dripping water, you don't want to drip across your living room carpet...the kitchen floor is much easier to dry out. It's for those reasons that we're seeking the relief for the spa setback of 8 feet from a side yard, rather than the required 12 feet.

Mr. Hirsch asked the 9 foot measurement on the survey is to what.

Mr. Boesch replied that would be to the water surface.

Mr. Hirsch asked that's to the water surface of the spa.

Mr. Boesch replied correct...whereas the actual edge of the structure of the spa would be 8 feet.

Mr. Hirsch said alright, 8 feet instead of the required 12 feet...and the fence, that's the existing fence along the side property line...that is an existing vinyl fence. It's a solid fence, 6 feet in height.

Mr. Boesch replied correct. And what has been accomplished through this change is a non-conforming shed and dog kennel with a zero foot setback would be eliminated in lieu of a spa, although still requiring a setback variance that's not on the property line, whereas those other structures would have been...and were.

Mr. Hirsch said well, we don't know if the other structures were there lawfully. Do we.

Mr. Boesch replied well, the only thing that we have is at the time the Powers moved, they did have the Zoning Officer review the property and they did get a certificate of performance...whether it was just for the main structure or the entire site was reviewed...that I couldn't say.

Mr. Slazyk asked what year was that.

Mr. Boesch replied 2002.

Mr. Hirsch said okay. Anything else about the spa.

Mr. Boesch replied that's the main issue on the spa.

Mr. Hirsch said okay and what else are we going to move to next.

Mr. Boesch stated the other significant issue to us is the patio around the pool. It was expanded to the south to provide for what we like to refer to as more usable patio. It had a 2 1/2 foot wide concrete ribbon. It provided for an area for children to run around but it didn't really provide an area for passive activity...basically sunbathing around the pool.

Mr. Hirsch said well, it's been expanded not just the south. Right.

Mr. Boesch replied and to the east as well.

Mr. Palmieri stated I have a quick question. On the original survey, with the pool going towards the rear...it say "brick". Is there like a brick area that was there.

Mr. Boesch replied there was an old brick patio area that heaving and in poor condition. So that was what was replaced by the new brick area...but that was widened in order to accommodate minimal usage and we have one last photograph of that area of brick pavers. They are dry laid brick pavers with typical lawn furniture.

A-8 Photo of patio leading to the rear

Mr. Boesch said and the reason for that photograph is just to show you that we weren't proposing this expansive patio. We just wanted to be able to get some lounge chairs back there.

Mr. Hirsch stated alright so that's showing the patio going towards the rear property line heading south. And you also expanded it to the east. So the variance to the rear is what. What's the setback on the line. Zero.

Mr. Boesch replied it's 3.2 feet to the east and 1.7 feet to the south.

Mr. Hirsch said now remind us again...what are we over on the coverage here. What is that.

Mr. Boesch stated okay. That's the last issue I was getting to was the impervious surface coverage and the calculations of what existed at the time that they purchased the property and what they're proposing now and comparing the two.

Mr. Hirsch said okay. This is the big ending.

Mr. Boesch stated now hearing the first application...Mr. Slazyk's comments about the drainage easement. That was one thing that I had not taken into account so I did some quick calculations. We do have a 7 1/2 foot wide drainage easement on the west side of our property...so the numbers that are shown in the Zone Table on the proposed condition didn't take that into account. So I did calculate them.

Mr. Palmieri said they would have been existing at Purchase Date too. The number would be the same so whatever number you came up for the "proposed", you're going to have to adjust the existing and purchase date to...I mean obviously they correlate based on what your schedules look like.

Mr. Boesch stated so the impervious surface coverage on the site at the date of purchase...the total impervious surface area was 3,391 square feet including the deck, the shed, dog kennel, dog run...

Mr. Hirsch asked and that's subtracting the easement area or not.

Mr. Boesch replied no. That's just the pure square footage impervious coverage.

Mr. Hirsch said okay. You're going to get to the percentage. Okay.

Mr. Boesch stated when applying the lot area with the drainage easement removed from consideration, that is a coverage of 54.26 percent at the date of purchase. With the proposal, with the removal of the deck and all that other stuff which is already gone, the expanded patio and what's shown on Exhibit A-2 as additional items that they're willing to do...there's a curved sidewalk that leads from the existing pool deck to where the old wood deck was...they're looking to take that out. There's an area of asphalt pavement at the northeast corner of the existing garage...they're looking to take that out. There's a portion of sidewalk that runs from the driveway to the kitchen door...they're looking to take that out. With those impervious surface removals, with the additional patio area that's proposed, the total impervious surface coverage becomes 3,400 square feet – a change of 9 square feet. The coverage then becomes 54.38 percent. So, for all intent and purpose, from an impervious surface standard, 9 square feet...and I don't know if I am permitted to remove the water surface area of the spa. I know the ordinance does state that you can remove the water surface of the pool. If I were to toss in the water surface area of the spa, it would be a wash. Coverage for coverage would be equal.

Mr. Palmieri stated on the new survey you did, it says "retention wall" along the rear property line. I was looking at that photo that you were showing where the additional patio area...where the lounge chairs were located...but I didn't see a retention wall or a retaining wall.

Mr. Slazyk said it's not on your property.

Mr. Palmieri stated on the survey it say "retention wall"...but you're saying you're referring to the retention wall on the lot behind you...even though the words "retention wall" are written on your patio side.

Mr. Boesch said no, there are actually two. Our neighbor does have one. There's a paver stone edging that's just elevated slightly above the area between the patio and it's not really a block wall, so to speak.

Mr. Palmieri stated it's just part of the decoration. It doesn't have a purpose like holding back...like if it were four feet high...it serves a purpose.

Mr. Slazyk said decorative.

Mr. Palmieri stated and I guess going along on the east side of the property, it says "block wall". Is that along the same lines or is that...

Mr. Boesch replied that's correct. We just continued the nomenclature that the most current survey showed, even though it is more just a patio edging than a vertical wall.

Mr. Hirsch asked is the drainage easement...is that like a swale type easement or has that got a pipe underground.

Mr. Boesch replied there's an existing inlet located in the northwest corner of the lot to our rear and that pipe proceeds in a northerly direction to Annapolis Street. So the

structure does not fall on our property. It's merely the path for the pipe. And it's not a swale.

Mr. Hirsch said right. It's to locate a pipe subsurface to carry the water. You're saying the pipe is essentially on the property line between the two properties.

Mr. Boesch replied that's correct. I believe it would actually fall on ours...no, it's too close to call.

Mr. Hirsch said now if the drainage easement...I realize it's on the document...if the drainage easement was part of the property...if it didn't have to be excluded...then your numbers on the survey would be accurate...which would be 40 percent permitted, of course, either way...45.21 percent at the date of purchase which is 2002...47.65 currently and proposing 45.33...if we put that land back in.

Mr. Boesch replied correct.

Mr. Palmieri asked Jeff, other than on your letter, the only thing you're addressing is the shed in the drainage easement.

Mr. Rauch replied yeah. The shed in the previous location kind of like blocked the flow of the water getting to the inlet so by relocating it, it cleared the way that the water can actually get to the inlet.

Mr. Palmieri asked no other issues other than that.

Mr. Rauch replied no. It's just that it was within the easement and at the time it was also blocking the drainage pattern to the inlet.

Mr. Palmieri said I noticed on A-8, it's just hard to see on the survey looking at the patio along the southern part of the property...the distance from the vinyl fence to say the edge where the patio would be...do you have any idea of what that would be...is it like a foot.

Mr. Boesch replied 1.7 feet.

Mr. Palmieri said 1.7 feet...because it looks a lot closer on the survey.

Mr. Palmieri asked do any Board members have any questions. There were none.

Mr. Palmieri stated obviously it's a big improvement from what we originally had.

Mr. Palmieri noted that there was no more public. He asked the applicants and their engineer if they had anything else to add.

Mr. Boesch said the variances that have been eliminated with the improvements...we feel that we have provided a benefit to balance the variances being sought.

Mr. Palmieri stated that's a good point. In Lori's letter, she had 7 variances that were needed. The ones that you're going to need variances for...just so we go down Lori's letter...you looking for the water's edge to the spa...you would need a variance still because 12 feet is required.

Mr. Boesch replied correct. It was one foot before in the prior design. It's now 8 feet where 12 is required.

Mr. Palmieri said #2...

Mr. Boesch stated the walkway that goes around the spa will also require a variance.

Mr. Hirsch asked what's the setback of that walkway again.

Mr. Boesch replied it's supposed to be 12 feet. I believe it's 4.

Mr. Palmieri stated and also a variance for the pool setback. It's required to be 12 feet and you're saying it's 9.2.

Mr. Boesch said right and that being a prior condition at time of purchase.

Mr. Palmieri stated and the same thing with the walkway around the pool.

Mr. Boesch said correct.

Mr. Palmieri stated the shed does not need a variance because it's been relocated.

Mr. Boesch said that's correct.

Mr. Palmieri stated and a variance for the lot coverage where the calculation would be used without the drainage easement. So you're requesting 54.38 percent.

Mr. Boesch replied correct.

Mr. Palmieri stated alright. Now we know what all the variances are.

A motion to close the public portion of the Power hearing was offered by Mr. Porzio and seconded by Mr. Slazyk. A voice vote was unanimous.

A motion to approve the Power variances based on the revised site plan dated 9/26/08 was offered by Mr. Slazyk and seconded by Ms. Oltman

ROLL CALL

Yes: Mr. Slazyk, Ms. Oltman, Mr. Palmieri, Mr. Porzio and Ms. Madzin

No: None

Abstain: None

PAUL & LINA ESPOSITO
29 PILGRIM AVENUE
SIDEYARD SETBACK & GARAGE CONVERSION TO LIVING SPACE
BA 2008 – 28
BLOCK 124.11 LOT 17
CARRIED FROM SEPTEMBER 4, 2008

The applicants, **the Espositos**, did not appear at the meeting. The Board Secretary advised he had not heard from them since the last meeting.

The Board decided to extend them the courtesy of carrying the Esposito matter to December 4, 2008.

A motion to adopt the resolution in the matter of Med Prep Consulting was offered by Mr. Porzio and seconded by Mr. Slazyk. A voice vote in favor was unanimous.

A motion to adjourn was offered by Mr. Slazyk and seconded unanimously.

Respectfully submitted,

Doug Gotfredsen
Secretary