

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, Lomangino, Battista, & Roche

Absent: Messrs. Rickert and Porzio

Also present: Mr. Hirsch, Board Attorney  
Ms. Swartz, Acting Board Secretary

**Mr. Palmieri** read a statement of procedural guidelines.

NY SMSA LIMITED PARTNERSHIP d/b/a VERIZON WIRELESS	BA 2007 – 22
1029 SYCAMORE AVENUE	BLOCK 45 LOT 5
USE & BULK VARIANCES AND SITE PLAN APPROVAL	
<b>CARRIED TO SEPTEMBER 18, 2008</b>	

**Mr. Palmieri** advised Ms. Swartz to contact the Verizon Wireless attorney and advise him  
He must be prepared to proceed September 18<sup>th</sup> or the Board will dismiss the application.

GLENN AND GERARDINA WORTON	BA 2008 – 06
16 COLONIAL DRIVE	BLOCK 124.03 LOT 1
SIX FOOT FENCE IN FRONT YARD	
<b>CARRIED FROM MAY 1, 2008</b>	

**Glenn Worton**, the applicant, came forward and was sworn in by Mr. Hirsch.

**Board member Mr. Rickert arrived at this time.**

**Mr. Palmieri** stated just to recap you were looking to put in a fence and you have a corner lot. You were looking to put in a six foot white vinyl fence to replace an existing fence but you're going to be changing the angle of the fence so it would be more parallel with Liberty Drive. Is that correct.

**Mr. Worton** replied that's correct.

**Mr. Palmieri** continued and we were having some discussions of the actual distance from the fence to the property fence as opposed to the curb line and all that kind of stuff. So I guess that's kind of where we left off, if I remember correctly.

**Mr. Worton** answered yes.

**Mr. Palmieri** said so go ahead and expand on all of that tell the Board where we're at.

**Mr. Worton** stated what I'd like to do is move...right now I have the existing fence, the closest point to the property line is 6.5 feet...6 ½ feet.

**Mr. Palmieri** asked and that would be against the adjoining property on Lot 2. Is that correct.

**Mr. Worton** replied yes.

**Mr. Hirsch** asked the 6.5 feet, is that at its closest point you're saying to the side property line.

**Mr. Worton** replied yes, on Liberty Drive.

**Mr. Lomangino** asked do you mean to the curb or to the property actually behind you.

**Mr. Hirsch** said it's to your front property line. I was getting confused. The Chairman mentioned Lot 2, so I didn't want us to think we were measuring it from Lot 2. The existing fence is 6.5 feet at its closest point to your front property line along Liberty Drive.

**Mr. Worton** answered yes. Now the other end of the fence...when it was installed, it was crooked.

**Mr. Palmieri** asked the existing fence.

**Mr. Worton** replied the existing fence, right. What I'd like to do is match that corner to the back corner...the 6.5. I'd like to bring that out 6.5 feet to the property line.

**Mr. Lomangino** asked you're talking about the corner of your garage, right.

**Mr. Worton** replied yes.

**Mr. Lomangino** said you want to straighten that out.

**Mr. Worton** stated straighten that out, correct. I made a little sketch if you want to take a look of what exactly I'd like to do.

**Mr. Palmieri** said well, before we get to that, I think when we had our last meeting, some of the discussion was talking about the distance of the whole fence...being the 6.5 feet that you're requesting...and I guess the other information that I guess the Board was looking for was the point at where...going back to the existing fence at the other end closer towards the corner of the house...how far that distance would be from where your existing to the common property line as you're using it to measure the 6.5. Did you happen to do that one.

**Mr. Worton** asked the existing to the property line.

**Mr. Palmieri** replied yeah at, I guess, its furthest point or the point where it matches the asphalt driveway. I assume that's where it comes in.

**Mr. Worton** asked oh, from there to the property line.

**Mr. Palmieri** replied yeah.

**Mr. Worton** said yeah, from there to the property line...I have that written down. Let me see.

After some time, **Mr. Palmieri** asked Mr. Worton, is that a measurement that was taken or you're just going to be...I don't want to say you're guessing at the distance.

**Mr. Worton** replied I did take the overall measurement of what I would be putting in.

**Mr. Palmieri** said right.

**Mr. Worton** said from the garage to the property line.

**Mr. Palmieri** stated I mean there's a measurement on the drawing on the site plan of 35.1 and based on what that's showing, that's going from the corner of your house on the Liberty side to your property line on Liberty Drive...and what I was looking for was along that measurement line where the existing fence crosses that line along the asphalt area...that distance from the corner of the asphalt to your property line...because I think when the Board was last listening to your application, what the Board was suggesting some kind of halfway between the distance of the 6.5 feet you're talking and where the furthest back part of the fence that's pre-existing is. This way you can straighten it out from there.

**Mr. Lomangino** said reversing the angle.

**Mr. Palmieri** stated well, making it straight so it stays parallel with Liberty Drive...just instead of being the whole fence 6.5 feet, some distance in between. Do you understand where I'm coming from.

**Mr. Worton** replied yeah, I understand what you're saying. The whole point of me actually doing this was not only to square it off with the property but also to enhance the area of the back yard for my children to play in.

**Mr. Hirsch** said maybe everybody is not on the same page. When your wife presented this application at the last hearing, we understood what you just said. You said the same thing. The Board expressed concerns to her that they were not thrilled about having the 6 foot fence only...whatever we weren't clear about that because we were measuring to the street line but approximately 6 ½ feet to the front property line. So the suggestion was...the Board discussed some possibilities...carry the application...think about some other alignment that might satisfy the Board and come back. So essentially tonight you've come back and said the same thing that your wife presented at the last application, that you want to make it parallel 6 feet from the property line. So, what you're saying is you listened to what the Board said at the last meeting but you don't want to change it. You still want to go forward with that. Then I guess that's what the Board will vote on.

**Mr. Worton** stated well, the reason why I wanted to do that is because there are a lot of properties that are even closer, a lot closer to the curb, to the property line which I have pictures of to show.

**Mr. Hirsch** said if you have any exhibits you want to mark into evidence, you can give them to me. I will put them in evidence.

**Mr. Worton** replied sure...but I'd like to stay with the 6.5 to the property line. I just wanted to move the one corner, just square it off and leave the existing where it is.

**Mr. Hirsch** said I think the Board understands what you want to do. I think they understood the last time what you want.

**Mr. Battista** stated Mr. Worton, this is what we were discussing last time...that same angle but potentially getting more space on this side. It actually would equal out. What you would lose here, you would gain here but it's the same angle but it's not all 6 ½. It's more pushed in so it's straightened out. That was what was thrown out as a potential option. Whether you like it or not, I'm just saying that's what we had discussed so that is a potential other option.

**Mr. Worton** said no, I still want...

**Mr. Battista** stated okay because we were talking around. I just wanted to make sure that you saw sort of what we had brought up as an option with your wife.

**Board member Mr. Porzio arrived at this time but will be unable to vote on the Worton application.**

A-1 Photo shows another corner lot at 191 Cannonball Drive showing a fence about 8 feet to the curbline
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A-2 Photo shows another corner lot on corner of Cannonball/Revere showing a fence on the driveway of the neighbor about 8 feet from the curb

A-3 Photo shows another corner lot, corner of Pioneer/Garrison showing a fence that's 6 feet to the curb

**Mr. Palmieri** asked Mr. Worton, do you know what's the distance from the curb on Liberty to your property line.

**Mr. Worton** replied 10 feet.

**Mr. Palmieri** said so from the curb to your property line is 10 feet. Then from the property line to the fence is another 6 ½ feet. So it's a total of 16 ½ feet from the closest point right now to the curb.

**Mr. Worton** stated I also have some shots of my own fence.

**Mr. Palmieri** asked existing.

**Mr. Worton** replied yes.

**Mr. Palmieri** said you know, just looking at the site plan, the way the existing fence looks, that 10 feet, I'm trying to...just give it to Mr. Hirsch and let him mark it into evidence.

**Mr. Slazyk** stated I have a quick question, Ron. How do we know that these fences are even...

**Mr. Hirsch** asked are even what. You didn't finish the sentence.

**Mr. Slazyk** stated were even approved in the past.

**Mr. Palmieri** said well, what Erin had done...she went and pulled some of the addresses that we're talking about that were put into evidence. 117 Colonial was pre-existing, non-conforming...191 Cannonball – pre-existing, non-conforming. 5 Wheeling Court – its variance relief was granted in 1993 and 25 Pioneer is pre-existing, non-conforming. With the pre-existing, non-conforming...what that means is prior to the Ordinance changing, they allowed the fences to be built in that area...whatever the fence height was or the distance from the property, it was allowed and the Ordinance has since changed, saying here's the new rules for fences...say, if those fences were to be knocked down for some reason, especially on Cannonball, there's a new ordinance saying the fences have to be certain distances. So they would have to say, I want to put it where it was. Well, you can't do that. You have to come here, too, and say I want to put my fence back up. I took down and now I want to put it back up. Well, you can't. You're allowed to replace sections, which would probably be the smart thing to do but if the whole fence came down at one time, you couldn't put it back where it belonged.

**Mr. Hirsch** stated except for the fence that was granted by variance. That could be put back up. The other ones you couldn't.

**Mr. Palmieri** said that's why they call it "pre-existing, non-conforming".

**Mr. Slazyk** stated and the houses that had to come before us on Cannonball have been rejected.

**Mr. Hirsch** said Mr. Worton, do you want to describe these two photographs to the Board that I've marked now as A-4 and A-5.

A-4 Photo looking at applicant's fence from Liberty

A-5 Photo looking at applicant's fence from corner of Colonial/Liberty

**Mr. Worton** stated see the fence also...it doesn't obstruct any view of either Liberty or Colonial.

**Mr. Palmieri** said obviously the problem you have is because you're a corner lot and you have two front yards. You know, if this was up against somebody else's yard on the side, it wouldn't even be an issue right now. You'd be able to follow the property line up towards the side of the house. And, obviously, that's why the Council goes through all this stuff when they have issues with fences and other things and they want to keep the whole town in conformity. That's why we were suggesting at the last hearing...instead of being the 6 1/2 feet from the property line, some compromise area in between. That's why I was asking what the distance from the fence at its furthest point. Like you were saying before in some of the measurements you were taking, they were 8 feet from the curb. Well, we don't know where the property line for any of that was and...that's why Erin did some research to find out because I think your wife had mentioned that these properties have fences real close to the curblines...which is a very big issue in that part of town with all the fences being so close. So, whenever anybody comes in front of us, we understand what your situation is but like everything else, there's got to be a compromise where we don't exceed...more of a violation against the Ordinance of what the Council had put together for us to follow...but that's why they give up the relief of this Board to say "yes" to certain situations where relief has to be given. It doesn't say we have to give 100 percent relief but some kind of relief has to be given. That's why we're talking about trying to find some distance in between where you want it and the angle of the furthest point of the fence. So I don't know...and it's your decision ultimately to say "no, I want 6 1/2 feet and that's it" or "maybe I could do this other distance." But, that's your decision. And obviously you're hearing from the Board on a little bit on how they're feeling about the 6 1/2 feet thing and obviously, people say "I'm 16 feet from the curb." That's not the way we have to look at it. We have to look at it from property line distances. And you have two front yards which is...the detriment of what's happening with the property...the two front yard thing.

**Mr. Worton** stated right.

**Mr. Palmieri** said I think Mr. Battista at the last meeting or somebody said about splitting the difference between the furthest most point and the closest most point...of some kind of mid-range area in there and I don't know how amenable you are to that.

**Mr. Worton** said well, that would be 12 feet from the property line to the existing.

**Mr. Palmieri** stated right, because that's the question I was asking before...how far is the longest point from the property line to the furthest away part of the fence and I know you had said you had measured it and to me, I'm looking at it based on the scale of the drawing, it's probably somewhere, maybe 15 feet, I guess from the property line at its furthest point...and you're asking for 6 ½. So we have some in between area in there. You're at 6 ½. For us it's 15. So would 9 or 10 be more feasible for you and the Board members. I'm not saying that you have to do it but...follow the same line that you're saying for the new fence, just maybe move it back 2 ½ feet more than the 6 ½ and make it 9 feet. Not that I'm trying to speak for the whole Board but that's the feeling that they're getting here. The Board could always voice their own opinion of course.

**Mr. Worton** said alright. Now you're saying 9 feet from the property line.

**Mr. Palmieri** stated as opposed to 6 ½.

**Mr. Battista** said which should, if the math and again, I don't have a true ruler here, but it looks like you actually would...first of all, you'd have a straighter piece...from a kid's play area, you'd have a little bit more room there...but I think also you'd have a net gain...based on the current angle because that angle all the way in the far corner, the real estate there is a little smaller than the angle that you have here, so you'd wind up gaining maybe not a lot but you would actually gain in overall space inside the fence by going back and that way.

**Mr. Palmieri** stated I mean 2 ½ feet.

**Mr. Worton** said that's fine. We can go with that. I can work with that...2 ½ feet.

**Mr. Palmieri** stated so that would be a total distance of 9 feet from the property line.

**Mr. Worton** replied 9 foot, yes.

**Mr. Palmieri** asked if the Board members had any questions. There were none. Mr. Palmieri then opened the floor to the public for questions/comments.

<p>A motion to close the public portion of the Worton matter was offered by Mr. Battista and seconded by Mr. Slazyk. A voice vote in favor was unanimous. Mr. Porzio was ineligible to vote.</p>
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A motion to approve the six foot fence at 9 feet from the property line in the Worton application was offered by Mr. Battista and seconded by Mr. Lomangino.

**ROLL CALL**

Yes: Messrs. Battista, Lomangino, Palmieri, & Slazyk

No: None

Not eligible: Messrs. Rickert, Porzio & Roche

KENNETH HAGER  
22 ORLA COURT  
REAR YARD SETBACK FOR ADDITION WITH ATTACHED DECK

BA 2008 – 14  
BLOCK 84 LOT 10

**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 Hager matter was offered by Mr. Lomangino and seconded by Mr. Battista. A voice vote in favor was unanimous.

**Kenneth Hager**, the applicant, came forward along with his contractor, **Dave McKendrick**, 197 Cartegen Drive, Brick, and were sworn in by Mr. Hirsch.

**Mr. Hager** advised we trying to do an extension on the back of the house to re-do our kitchen and our dining room. We want it to run all the way across the back of the house. We're going to extend our dining room, our kitchen and add a new family room. As a result of that, we're encroaching 3.2 feet off the rear setback line.

**Mr. Hirsch** said let's see if we can't get all the numbers straight first.

**Mr. Palmieri** asked on the site plan that was submitted, with the addition that's proposed to the rear of the property...I guess before we get into that, just so we have idea of what's going on around your property...directly to the rear of your property, I guess it's Lot 18 and it says "TM and FM".

**Mr. Hager** replied we're a homeowners association. Directly behind my property is part of the homeowner association's common property and it's about 60 wide that runs the length all the way around our neighborhood. And then right behind that is Hockhockson Road.

**Mr. Hirsch** said alright, just so we're clear...in your survey, you see, because your lot, because it's a cul-de-sac, which is part of the problem here...you have a funny orientation...so when you say "rear, side," it gets a little tricky but the common area that's controlled by the homeowners association...if you look at this, you see Lot 18 at

the top of your survey and that runs also to what appears to be the rear of your house...that whole area is the common property you're talking about.

**Mr. Hager** replied that's correct. Where it says "wooded"...all that is woods and a common area.

**Mr. Palmieri** asked now the addition that you're putting onto the rear of the house, I guess and I didn't see anything about lot coverage, right. Oh, yes, we do have it so that's not the issue. The only problem we really have are the setbacks.

**Mr. Hager** replied that's correct.

**Mr. Palmieri** said the major setback is going to be on the property...I guess the western side of your property.

**Mr. Hager** asked the one corner.

**Mr. Palmieri** said the one corner that's on the western side of your house, the corner, and it's going to be basically encroaching 3.2 feet at its largest encroachment. And I guess the proposed wooden deck is also encroaching on the setback. And how much is that.

**Mr. Hager** replied 6.2.

**Mr. Hirsch** stated wait a second, it's 34.2.

**Mr. Battista** said it's 5.8.

**Mr. Hager** stated so that's 40. You're right.

**Mr. Slazyk** asked what's the planter made of.

**Mr. Hager** asked what planter.

**Mr. McKendrick** replied it's not a planter. It's just...

**Mr. Slazyk** asked is it pavers, is it walkway, is it concrete, is it a structure of any type.

**Mr. McKendrick** said no.

**Mr. Slazyk** stated so there's no structure within the drawing where it says "planter". So, it's grass.

**Mr. Hager** replied correct.

**Mr. Slazyk** asked was that an existing area maybe off the deck or...

**Mr. McKendrick** replied I have a photo of the back. There's landscaping back there.

**Mr. Palmieri** said well, obviously if you put the proposed addition on, anything that's on the back of the house is going to be gone.

**Mr. Slazyk** stated I just wanted to make sure it's not a planter or structure of any type. There's no structure of any type within that specific area. The only thing that you have there is the corner of the house which is off to the righthand side of the proposed addition...that reads 36.8...and then to the center of the house, the proposed reads 40.1 to the house and then 34.2 to the deck.

**Mr. McKendrick** said correct.

**Mr. Slazyk** asked and there's nothing else that's going to be over to that righthand side.

**Mr. Lomangino** said you brought out a point...you left "planter" around the whole house. Does that mean you're going to have shrubs there.

**Mr. Hager** replied we do. I have landscaping that goes all the way around the house from the front down the side.

**Mr. Lomangino** asked so by "planter" you mean plants.

**Mr. Hager** answered yes. I have a photo of the existing back and the house and the landscaping showing the plantings.

**Mr. Palmieri** said no, not unless you have something laid out that shows where the new additions are going to come to. I mean that's your choice. You can submit anything you want.

**Mr. Hager** stated no, just so you understand what my intent is...to move those shrubs, put in the addition and then re-plant the shrubs.

**Mr. Lomangino** said I just wanted to know because sometimes it makes a difference when people say "planters", that means build a wall, stuff like that.

**Mr. Slazyk** stated that's why I keep asking "structure."

**Mr. Hager** replied no structure.

**Mr. Hirsch** said if you follow the dotted line...the 40 foot setback line...the dots go through the deck and proposed addition. I mean if you drew a solid line through there, you'll get a perspective as to the percentage of the structure that will actually be in violation. You can see the house itself, it's a very very minor corner where that 36.8 is and you hit the 40 feet pretty quickly after that because the property line is running away

from there and so is the structure. So, you can see if you draw that solid line, it's a relatively small portion of the deck also that is outside of the 40 foot building envelope. I don't know if that will help you.

**Mr. Lomangino** stated it did. Thank you.

**Mr. Palmieri** asked you don't have a shed or anything on this property.

**Mr. Hager** replied that's correct nor do I intend to.

**Mr. Palmieri** asked do any Board members have any questions about this. There were none. Mr. Palmieri advised that there was no audience left.

**Mr. Slazyk** confirmed there's no shed. There's no structures. What we see here is what you're going to do. No sidewalks. No pavers.

**Mr. Hager** replied that's correct.

**Mr. McKendrick** said I would just like to add also that the proposed wooden deck is a ground level deck.

**Mr. Lomangino** said in other words it's not a raised deck. It's right on the ground.

**Mr. Battista** asked from the deck itself, do you have to clean out...I mean do you have a wooden area there so typically...

**Mr. Hager** replied there's nothing that has to be cleaned.

**Mr. Battista** stated so by putting that deck in, there's going to no...none of the existing trees are going to need to be disturbed.

**Mr. Hager** said that's correct. We have a back yard and then we had trees and the homeowners association has trees and we're not touching them.

A motion to close the public portion in the Hager matter was offered by Mr. Slazyk and seconded by Mr. Lomangino. A voice vote in favor was unanimous.
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A motion to approve the variance in the Hager application was offered by Mr. Slazyk and seconded by Mr. Battista.

**ROLL CALL**

Yes: Messrs. Slazyk, Lomangino, Palmieri, Lomangino, Rickert, Porzio & Roche

No: None

Abstain: None

A motion to adopt the David Farmer resolution was offered by Mr. Battista and seconded by Mr. Lomangino. A voice vote in favor was unanimous. All were eligible to vote.

**A motion to adjourn the meeting was offered by Mr. Lomangino and seconded unanimously.**

Respectfully submitted,

Doug Gotfredsen  
Board Secretary