

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, Diamond, Lomangino, & Battista

Absent: Messrs. LaValle & Battista

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

Mr. Palmieri then read a statement of procedural guidelines.

At this time the Board Attorney swore in its newest member, George Eric Rickert.

QUICK CHEK CORPORATION	BA 2007 – 06
5119 ASBURY AVENUE	BLOCK 124 LOT 18
USE & BULK VARIANCES AND SITE PLAN APPROVAL	
CARRIED FROM SEPTEMBER 6, 2007	

The Board consented to carry the matter until December 6, 2007. An extension of time was granted until December 31, 2007.

E & J TINTON FALLS 6, LLC (CAMPO FAMILY)	BA 2005 – 15
530 SHAFTO ROAD	BLOCK 115 LOT 14.02
EXTENSION OF APPROVAL FOR SELF STORAGE FACILITY	

Michael Pane, attorney for the Campo Family, came forward on behalf of his client.

Mr. Pane reminded the Board that he was there representing E & J Tinton Falls 6, LLC, when the application was approved two years ago. He stated to kind of update you, I am actually here representing a different entity than I was two years ago. To give kind of a history, I am here tonight representing the Anthony Campo Family Trust II LLC, which is the owner of the property. The original applicant, E & J Tinton Falls 6, LLC, was the contract purchaser of the property. For various reasons including the death of one of the partners, and of course the changing real estate market, E & J Tinton Falls 6 did not follow through and purchase the property. They continued with the approvals somewhat after we were approved two years ago but then basically abandoned the project during

probably about midway through 2006. The owner then turn over, negotiated with all the professionals, including John Truhan, consulting engineers, the project engineer, to get them back onboard in order to finish up the approvals and essentially complete the project. That's where we are now. They also retained me to come back and also help in that regard.

What has happened since then is they have completed some of the items. We've submitted, I think, two revisions of the plans. So we've satisfied some but not all of the conditions. The major other development that's happened in the last few months is the County approval was actually denied...and the reason for that denial is the entrance. As you may recall, the property is rectangular-shaped and Shafto Road cuts off a corner of it like that. So the frontage seems very small and the County, of course, to meet their standard requirements would require the driveway to bow out beyond the borders of what may be the property. Now, we've gone back to the property owners on either side, as we had done two years ago and requested that they grant us an easement or sell us a piece of their property. One has not responded. The other has just simply said no. So we will be going back to the County shortly in order to do that. The problem is we're trying to determine by looking at the history of the site exactly what the frontage is. There's a deed at the County which indicates we have, I think, 63 or 6a4 square feet of frontage. However on the plans, we're showing, I think, about 40. So, if we can determine that the County actually owns further back, because of the way it cuts the corner, the further back the right-of-way actually is, the more frontage we have. We may be able to make it conform to the County requirements. So we hope to be going back to the County within a month. That's really the only outstanding approval that represents a problem.

After that, my client will either develop the property themselves or they will sell it to another developer so that it can be constructed.

Mr. Hirsch asked Mr. Pane, I wasn't quite clear, who did you say was the owner.

Mr. Pane replied Anthony Campo Family Trust II LLC.

Mr. Hirsch said that's not what's listed in your letter. So I just want to be clear. It says Anthony Campo V LLC. That's why I want to be clear. So the applicant is the Anthony Campo Family Trust.

Mr. Pane stated I apologize.

Mr. Hirsch said take a look at your letter...how you referenced the owner...so we get that clear on the record.

Mr. Pane, after speaking with his client, stated Anthony Campo Family LLC II...which I don't believe is what my letter says. I apologize for the confusion. Between this client and my last client and some of the numbers they came up with...there was no E & J Tinton Falls I through V, so I don't know where VI came from.

Mr. Hirsch stated your letter indicates you're seeking an extension of a preliminary and major site plan approval but the resolution was for preliminary and final approval. So you already have final. Just so everybody's clear.

Mr. Pane replied no, it's preliminary and final and we're looking for the one year extension.

Mr. Hirsch asked on the final.

Mr. Pane answered right...which is why we're here after two years as opposed to three.

Mr. Hirsch said I know. I'm just keeping it clear.

Mr. Pane stated I know. I'm trying to do the same thing. We're on the same page. That's where we are. If you have any other questions...it's been a strange road the last two years on this project but the end is in sight. We really just need to clarify that entrance issue and then satisfy the County with regard to that.

Mr. Hirsch asked one other thing real quick...do you have, is there something showing that E & J Tinton Falls 6 LLC who got the approval has assigned all their rights to your client. I mean, in other words, your client consented, as the owner, to that application, gave them the rights to get the approvals. We don't want two entities showing up, so can we get something to show that the other entity is out of it.

Mr. Pane replied we're trying to get that. Well, as I said...

Mr. Hirsch asked well, as I said, is there any issue that they may not give it to you...because we've got to have the right party here. You know.

Mr. Pane answered no, I agree with you. I think it's more just as an issue, as I said, one of the partners died. We're dealing with an estate. They're not one of the easiest...

Mr. Slazyk interrupted asking who was one of the partners.

Mr. Pane replied okay. It was Joshua Weiner and Louis Horowitz...were the two partners.

Mr. Slayzk asked and who passed away.

Mr. Pane replied Louis Horowitz.

Mr. Palmieri said and that was E & J Tinton Falls.

Mr. Pane answered yes.

Mr. Hirsch asked so when do you anticipate getting clear as to who now has control of this development. I mean I'm just trying to find out if E & J Tinton Falls 6 LLC has no longer any legal rights to pursue their application.

Mr. Pane replied they have no legal rights to pursue their application.

Mr. Hirsch said fine but can you get something on the record for us. I mean just because someone passed away doesn't...

Mr. Pane stated no, no, they defaulted under the contract to purchase and they had no rights for further extensions.

Mr. Hirsch asked did that contract provide you then with stand in their shoes, would have the right to take over any improvements. Was that provided for in the contract.

Mr. Pane replied actually it did but it also provided that they would sign something additional which they did not do. So...

Mr. Hirsch said well, send us something for the record to clarify that. You know, we don't want to get in the middle of a dispute between two other parties.

Mr. Pane stated absolutely. I can get you something to that effect.

Mr. Palmieri asked so we're granting the extension on the original resolution as stated under E & J Tinton Falls 6 LLC or are we going to give the new...

Mr. Hirsch stated that's why I was trying to clarify that. What they are saying is that the file should be now amended to show that the owner is the developer who was the owner at the time. Same owner, right, when E & J was here.

Mr. Pane said let's put it this way. If you don't have that now. If I can't get you something...I mean I can get you something that shows the change. I mean we'd take the extension in the old name just to preserve the approvals for another year. But, I can get you something if you feel more comfortable changing the name of the approvals from one to the other. For clarity, I agree.

Mr. Hirsch stated you're not here. I mean we don't want to get you in trouble. You're certainly not here representing E & J Tinton Falls 6 LLC. Right.

Mr. Pane replied no.

Mr. Hirsch said so they're not represented. So the real party and interest, of course, is your client, who's the owner as you described. I mean, I'm not trying to make this any more complicated than it's got to be. I'm not saying the owner can't come in and do that but, you know, we do have to get it clear because one party clearly has vested rights under the resolution...another legal entity. So I just want to make sure our record's clear

that we're going to now substitute so all the Borough's files will be up to date...that from now on, the person we are looking for and the entity that's also going to have to be on the bond. Has a bond already been posted.

Mr. Pane answered no.

Mr. Hirsch said no bonds were posted. So for all those purposes down the road that we have the right entity that's going to be responsible for the development. You know, who's the developer. And then this resolution will indicate sort of these facts that they now have taken over the development from E & J Tinton Falls 6 LLC who no longer has any interest in this application, so on and so forth.

Mr. Pane stated okay. What I will endeavor to do is I'll try and get you something from E & J Tinton Falls 6 LLC which shows that. Assuming, and I don't think the entity has been wound up yet. It's possible that it has...and if that's the case, I'll obviously demonstrate that, that the entity no longer exists. If not, I'll at least get you something from my office indicating, showing the history of it and how E & J no longer has any interest in this property.

Mr. Palmieri said I'm going to back to my original question then. Is the extension being granted to E & J or are we not giving any extension.

Mr. Hirsch stated I think you're granting the extension subject to the proof that they are in fact the party in interest now, which will be a condition, to Anthony Campo Family LLC II who is the owner of the property. Correct.

Mr. Pane replied correct.

Mr. Palmieri stated now, just for clarification, the original application is no going to expire technically for another year. Is that correct.

Mr. Hirsch said well, the approval is not expiring. The protection granted by the statute is expiring.

Mr. Palmieri asked and that's for 3 years. Is that correct.

Mr. Hirsch said well, this is a final so it's two years with potentially, with your discretion, up to 3 one year approvals.

Mr. Pane stated and just to refresh your memory also, this actually is a permitted conditional use in the zone. This Board granted...we applied for an interpretation as to two items that were raised by the Planning Board attorney at the time, Michelle Donato. You found in favor of us on one of the interpretations but not the other. And that is the one condition that we did not meet was that we had a basin within the buffer and therefore, the Zoning Board took jurisdiction.

Mr. Palmieri said okay. I mean I have no problem with the original application and everything we went through. It's just I want to make sure we're all on the same page like Mr. Hirsch had said – who owns the property and what the time frames are going to be. Procedurally, is this something that the Board would just say...we don't need to open to the public or anything.

Mr. Hirsch stated you can always open it up to the public. It's a public meeting even though there's no notice on this. Yeah, I mean the consideration on these...I mean you don't have to grant extensions. The statute says you may grant them based on the applicant showing good cause. You've been through this before. They're fairly routinely granted unless the consideration would be...has there been some change in the development regulations or in zoning that might have a substantial impact on this development that therefore you may not want to extend that approval. You might want them to have to comply with that new requirement. I don't know...there's no reports on this I don't believe...I'm not aware of any substantial amendments that would affect this site and so normally when there's development issues, market issues, so people are delayed...obviously there's some other complications here as you've heard from Mr. Pane. You know, it's within your discretion, for those reasons, to grant the requested extension.

Mr. Palmieri said one thing I'm going to do unless the Board members have any questions from Mr. Pane...I'll just open it up to the public to ask any questions. Seeing there's none.

A motion to extend the approval for one year in the matter was offered by Mr. Slazyk and seconded by Mr. Lomangino.

ROLL CALL

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

No: None

Abstain: None

WALTER JOHN & ANGELA GABRYSIAK
GREEN GROVE ROAD

BA 2007 – 14
BLOCK 123 LOT 43.01

UNDERSIZED LOT

Rick Brodsky, attorney for the applicant, came forward on behalf of his client.

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

A motion to accept service in the Gabrysiak matter was offered by Mr. Lomangino and seconded by Mr. Battista. A voice vote in favor was unanimous.

Mr. Brodsky stated the application pertains to property located on Green Grove Road about 150 feet off the intersection of Deal Road. This particular lot is the furthest one to the south in the 3-lot subdivision that was granted some time ago. What I would like to do is just to go back a little back to explain how we got here and why we're here. Back in 1988...I don't think any of these Board members were on the Board...I was in law school, I think. I think it was the Planning Board but in any event, back in 1988 the tract on which Lot 43.01 emanates was brought before the Board for a minor subdivision application to make 3 lots out of the existing single lot. That was granted in 1987 and perfected in 1988 and the 3 lots that were formed were the 3 lots that you see on the plans before you – 43.01, 43.02, and 43.03. At the time that that application was granted in '88, there was a house that existed on 43.02 and that house remains. So that was 1988. At the time the minimum lot size was 30,000 square feet. In 1990 there was an ordinance that was adopted which increased the minimum required lot size to 60,000 square feet if the given property was to be serviced by septic as opposed to sewer. All of these are septic. There is no ability to tie to the sewer at this location.

In 1992, Mr. Gabrysiak, who's seated to my left, purchased the 3 lots from the FDIC. Apparently there was a foreclosure and bank takeovers and things like that. FDIC acquired ownership of the property. Mr. Gabrysiak purchased the 3 lots from the FDIC. In 1996 or '97, the structure was constructed on Lot 43.03 – a single family residence which left Lot 43.01 as the last of the 3 lots, the only one being undeveloped, which brings us before you this evening. Lot 43.01 consists of 30,000 square feet. The plan says 29,999.61. The original subdivision plan had listed it as 30,000. It's pretty close. Based on that ordinance change, it requiring 60,000 square feet where a property is to be serviced by septic which is the case here. This constitutes an application to construct on an undersized lot. The structure being proposed by the applicant requires no variances, other than that variance for undersized lot. In all other respects, it would be a fully conforming residential structure. I think that gets us to where we're at. Let me have Mr. Gabrysiak sworn in to make sure that what I was explaining was correct.

Mr. Hirsch swore in Walter John Gabrysiak, currently residing at 89 Golden Eye Lane, Port Monmouth.

Mr. Gabrysiak advised that everything Mr. Brodsky stated was correct in the sequence of events.

Mr. Brodsky asked specifically with regard to the structure proposed for Lot 43.01, I just want to reiterate that I'm correct, there are no other variances being sought.

Mr. Gabrysiak replied no other variances required.

Mr. Brodsky asked if there were any other questions for Mr. Gabryziak.

Mr. Palmieri asked on the adjacent lot, 43.02, is there currently a septic system already in place there.

Mr. Gabrysiak replied yes, that's correct.

Mr. Palmieri asked do you have any idea where it is located on the property.

Mr. Gabrysiak replied it would be behind the existing frame house. The septic system for 43.03, the next lot, is also behind the existing structure.

Mr. Palmieri said that brings me to the 43.03 one, you had originally said that that house was built in 1996.

Mr. Gabrysiak stated no. John Chmielowiec, bless his soul, gave us an interpretation to make sure that there was nothing required in the performance bond, the deed that perfected the subdivision and everything else in '96, we built it a couple of years later.

Mr. Palmieri said and just going back to when the ordinance changed...

Mr. Gabrysiak stated which was 1990.

Mr. Palmieri continued about the 30,000 square foot...the size of the property in the 43.03...do you have any idea how big that piece was.

Mr. Gabrysiak said it's still the same...30,000 square feet.

Mr. Palmieri stated I was just trying to figure out the timeframe.

Mr. Gabrysiak said we built after the ordinance had changed. Let me back up a little bit to make it easier. Having researched this in great depth with the Secretary here (Mr. Gottfredsen), in 1988, Mr. Phillips had the subdivision perfected and it was 30,000 square feet lots for sewers. Subsequently the ordinance was changed...our R-1.5 ordinance was changed in 1990. In 1992 I bought the piece of property from the FDIC after the FDIC had asked the Tinton Falls municipality...Lori Ziegler...if in fact it was buildable, notwithstanding the ordinance had changed. The answer came back. It was a copy of the approved subdivision. Before we then proceeded to do the 43.03, we asked John Chmielowiec one more time let's go through this and he said everything was okay. We then do the septic tests and submitted the building permit and we built.

Mr. Palmieri stated I guess going back to the chain of events that occurred, normally, I guess, then with the new ordinance in place, you should have come in front of the Zoning Board to get the same kind of approval. I'm just asking the question...

Mr. Gabrysiak interrupted saying Ron, if I thought I had to, I would have been here because Lori's a stickler.

Mr. Brodsky said I think what happened is that at that time, application was made for the building permit...I guess someone made an interpretation that there was no variance required. The building permits were issued and they thought everything went forward.

Mr. Gabrysiak said John Chmielowiec's interpretation in '96...so we got the permit and we built.

Mr. Hirsch stated well, I think they probably needed a variance unless there's something else in the ordinance that grandfathered it...but that's a moot issue at this point.

Mr. Palmieri said well I was just comparing the lots, the size, and the pre-existing septic on 43.02 and 43.03 and now moving south to Lot 44...which I'm assuming that's a septic also. Do you have any knowledge if that's septic.

Mr. Gabrysiak replied I would assume it is because you can't tie into the Ocean Township Sewer Department. With John Chmielowiec we tried every trick in the book.

Mr. Palmieri corrected him to say every allowable application. Do you have any idea what the size of the lot is on Lot 44 by any chance.

Mr. Gabrysiak replied I don't know the answer to that...even though I've got surveys that go back to 1942. I don't know the answer.

Mr. Palmieri said and I'm assuming with the placement of the septic that would be on 43.01 would be just like the other houses. It would be behind the house.

Mr. Gabrysiak answered it hasn't gotten that far. We had Bob Nelson come out and do the septic probes and the County Health people and everything turned out fine.

Mr. Palmieri asked the County, they determine where the septic has to be placed.

Mr. Gabrysiak replied no. They just had us do probes. The septic position has not yet been put in.

Mr. Hirsch stated well, look. Let's get down to the nitty-gritty of this. You need a variance because you're putting a septic in. The town has determined that on lots with septic, they should be double the size because of current stringent standards of the Monmouth County Health Department. So, to establish your burden here, I mean, the hardship is fairly clear. The lot's here. It's been approved. You probably can't purchase additional land which, I guess, we can hear about, to make it any bigger. Assuming that evidence comes in, you got the negative impact. Well, you've got to address the potential negative impact in the ordinance that they want bigger lots for septic. So you're going to need evidence in front of us that the septic can be installed...you know...without any problems or any adverse impact.

Mr. Brodsky said yeah, so Mr. Gabrysiak, you had hired Nelson Engineering in order to study the property and to study this particular lot for suitability of the installation and utilization of septic sewers. Is that correct.

Mr. Gabrysiak replied that's correct.

Mr. Brodsky asked and what were you advised by Nelson Engineering.

Mr. Gabrysiak replied we were advised by Nelson Engineering resulting in a letter from the Monouth County Health Board that it was acceptable for a septic system.

Mr. Palmieri asked based on the lot size.

Mr. Brodsky replied based on the soil suitability.

Mr. Slazyk asked don't we need testimony from the actual engineer and have the paperwork in front of us vs...

Mr. Brodsky replied there can be no tie-ins for sanitary sewer. If we can't get septic, we can't develop.

Mr. Slazyk said I'm not disputing that but what I'm saying is you have an engineer. Shouldn't that engineer be here tonight to offer testimony vs just hearsay or information that we've got from the owner saying that "yes, he did say that." And "yes, we have this from the County." We don't have any documentation of that. The only document we have...

Mr. Gabrysiak stated the documentation was forwarded to the Code Official stating that the septic system could be installed.

Mr. Hirsch asked do we have that.

Mr. Slazyk said wait a second. I think he's saying the Code Official meaning Lori Paone.

Mr. Gabrysiak replied yes.

Mr. Slazyk said but Lori Paone shot it down because it needed this information.

Mr. Gabrysiak stated no, she shot it down because of the size.

Mr. Slazyk said right, because of the size but it doesn't matter what you give Lori Paone. You need to bring that information and you need to bring that engineer here. You need to have the paperwork. I mean you have to present that case.

Mr. Brodsky stated but I guess what I'm not understanding is the septic issue is an issue...either the septic can be installed or it cannot. I'm not sure how that plays what we're requesting here is the ability to build subject to, of course, getting septic. If we can't get septic, we can't build.

Mr. Slazyk said first of all, we have a variance that you need, right. And you have to come in here and prove to us that you have the documentation. Again, all we're having is the owner saying that "yes, he has that." I mean, for me, I would rather see the engineer in here giving testimony on what he had found...based on what Monmouth County has found. You know...seeing all the paperwork is substantiated. Correct.

Mr. Hirsch stated I think at least, you know, a report...might suffice that our engineer...you know, if it was submitted, the Board Engineer could have reviewed it and said "yes, based on the studies that they've done, the permeability testing, the area...you know, because this could affect the size of the house, the location of the house, obviously all that can be affected.

Mr. Slazyk said okay.

Mr. Hirsch stated look it, can the Board approve it, say "yes, we'll approve it conditioned on you then supplying us Monmouth County Board of Health approval and all the plans for the septic. They could do that if they chose to do so in their discretion but I think they also would have a right to say "as opposed to doing that, we'd rather see the information before we approve the variance to allow a home to be built on a 30,000 square foot lot.

Mr. Brodsky said what I can do is if I can get the document that Mr. Gabrysiak was referring to which was the report from the Monmouth County Health Commission which had analyzed the data that was submitted by Nelson with respect to the septic...

Mr. Hirsch stated well, if you want to submit that.

Mr. Brodsky said okay, I'll bring that up.

<p>A-1 Report prepared by Nelson Engineering, a letter forwarding same to the Monmouth County Board of Health, and the Board of Health's response confirming that the testing performed by Nelson Engineering appeared to be acceptable and that the soils are suitable for the placement of a septic system on this property.</p>

Mr. Lomangino asked did anybody look into...I know there were people at our Council meeting Tuesday and they were talking about having a sewer system on Green Grove Road very shortly. Does that come down as far as this property.

Mr. Gabrysiak replied not to my knowledge.

Mr. Lomangino said that might be something that you might want to look into...because they were guaranteed by the Borough Administrator that they'll have sewerage by Christmas. And they're on Green Grove Road.

Mr. Hirsch stated you may want to consider...

Mr. Brodsky interrupted saying well, certainly the applicant would prefer to tie in if he could.

Mr. Hirsch stated it would say you a lot of money. These septic systems aren't cheap.

Mr. Brodsky said no questions. Believe me, if we don't have to do septic.

Mr. Lomangino asked do you know where Gun Club Road is. Off Green Grove.

Mr. Palmieri said Gun Club. That's north of you. Past Deal Road.

Unidentified speaker stated it's not coming down that far.

Mr. Lomangino said okay, that was the first question. The second question, and if my timing is off, I'll just wait until later on, I was just wondering if this was a build-to-sell or are you going to be living in it yourself.

Mr. Gabrysiak stated we'll be selling.

Mr. Lomangino okay. Thank you.

Mr. Hirsch said getting back to A-1, obviously there's more done than that but that's the first step and obviously the location has got to be picked, tests have to be done exactly where the septic system will go, make sure there's no trees in the way and all the other kind of stuff they have to do.

Mr. Lomangino stated sure, which brings up my next question and goes to what Mr. Slazyk was saying...depending on where the septic system's going to end up...obviously it's going to be the size of the structure of the house and wouldn't we need to see that before we...because that might require a bunch of other variances because the lot's so small to begin with.

Mr. Hirsch said well, he's indicating that the house he constructs will not require any other coverage variances, setback variances, or no other variances. So, if for example, as a result of the location of the septic system, if they got down that far, they had to move the house, let's just say, for some reason and it had to be closer to a sideline and it violated the setback, they would have to come back to the Board for a variance because the Board is not granting any of those variances.

Mr. Brodsky replied right, right, and I don't think...there shouldn't be any problem with the setbacks in terms of it's not squeezing a house on the lot because, remember, the 30,000 square foot minimum lot size is what applies if you don't need septic.

Mr. Hirsch said yeah but of course that septic...they have to be much bigger nowadays than they did years ago and you have to have the right area and so on and so forth, so it could the house.

Mr. Brodsky replied no question. But as you indicated if we were to encroach upon any of the setbacks because of the placement of the septic, we'd have to come back.

Mr. Palmieri asked is there currently a shared driveway on this property...because I'm just looking at the plans, I know maybe it's not part of the whole application but...or is that an easement.

Mr. Gabrysiak replied there is an easement in there for that. However, the original subdivision had the driveway coming in from Green Grove Road...but it just seemed to make sense to let the one driveway do the same thing.

Mr. Palmieri asked when you have an easement on a property, do we not include that in the total lot coverage of the property. Didn't we have that problem over in Willowbrook when they did...they had an easement on the property when we were trying to figure out the lot size. You have to deduct an easement from the lot size.

Mr. Hirsch stated I think you have to measure your setbacks from the easement.

Mr. Palmieri said was that the problem. I couldn't remember. And I'm assuming the easement line is based on that broken line driveway easement. Is that how it works.

Mr. Brodsky asked the hatched area. Yeah.

Mr. Hirsch asked that's an easement just for the driveway easement.

Mr. Brodsky replied that's correct.

Mr. Hirsch responded that might not even matter. I'd have to look at that closer because it deals with, as I recall the ordinance, it deals with like drainage easements or conservation easements. It deals with steep slopes. It deals with detention basins, you know, measuring setbacks from those kinds of facilities. A driveway easement might not have the same impact. I'd have to double check that. That's not really before us. If it does, you know...

Mr. Brodsky said if it does, we'd have to come back for a variance. I think there's plenty of depth within the property, even if we were to take the setbacks from that easement line to more than comply with whatever the required setbacks would be.

Mr. Palmieri asked Mr. Slazyk “did you read through that” referring to A-1.

Mr. Slazyk replied I read through it all. It basically says that the soil is acceptable.

Mr. Palmieri asked it doesn’t refer to the size of the property.

Mr. Slazyk replied no. It doesn’t say anything at all about that. It just addresses...basically, they did two tests...bores...and determined that the soil was suitable for a septic. Now, if you look, there’s a map on there that illustrates where they actually took the two samples from. It’s more in the front of the property than in the rear of the property.

Mr. Hirsch said this just means there are soil types in there that would make a septic tank feasible. There’s a whole lot more that has to be done ultimately. I mean surely 30,000 square foot lots can have septic. I mean it’s not, per se, that they’re not large enough. And quite frankly, you know, I knew at one time but I don’t recall right now why they adopted that section of the ordinance. I remember that issue came up and I have to go back historically why the engineers or why the town wanted to double the size of those lots when septic were involved. I think a lot of it became a moot issue because so much of the town got sewerd but...That’s really sort of what you need...what is the reason and what is the purpose and therefore is that purpose being frustrated by allowing this lot to have a septic. Probably not.

Mr. Palmieri stated I guess the other thing, since you own the 43.03 and originally developed that lot and you said you worked with John Chmielowiec on developing that lot...I don’t know if there’s anything that you have in your records that showed or that maybe John Chmielowiec had had...to show why the building permits were granted for building on an undersized lot.

Mr. Gabrysiak said Mr. Palmieri, all he said it met the requirements and the subdivision had been perfected by deed signed by the Planning Board President and Planning Board Secretary.

Mr. Hirsch stated what I would suggest is, if the Board is inclined to grant the variance, that it thinks it has enough information, that the condition of approval would be that the applicant would have to supply to the Board the final approvals by the Monmouth County Board of Health and any of the engineering information that goes with it for review by the Board Engineer, just to make sure the Board Engineer also, on his review, feels that he sees no problem from the Borough’s perspective in the purpose of that ordinance that would be impacted by where the septic tank ultimately is going to be proposed and the size of it...and you could put that in as a condition. I mean, obviously the applicant knows he can’t build until he does that anyway.

Mr. Brodsky said and we have no problem with that. Wouldn’t that also be a condition of the building permit as well...the CO I guess.

Mr. Hirsch stated yeah, I know, but we're granting the variance, you know. So I think to make sure not only that it's physically possible but that it also doesn't have any other adverse impacts that would affect the purpose of why that zoning ordinance is in existence. Not from the building side.

Mr. Slazyk asked is that by the Zoning Board Engineer or is that by the Borough Engineer.

Mr. Hirsch replied it's an application in front of the Board. The Board Engineer could review it.

Mr. Palmieri said I think the other question arises is why they originally changed it from 30 to 60.

Mr. Battista stated somebody doubled it for a reason. All I want to know is why...and that will help me make a decision as to why this was done. I mean if it turns out it was because it was a terrible thing then maybe we ought to think about that but I can't see how we can go from 30,000 square feet to 60,000 square feet arbitrarily without some significant decision being made. I think we need to know that as a basis of this variance and I don't think anybody here can answer that at this point.

Mr. Hirsch said well, understand one of the reasons we're here is grant variances for the right circumstances so it's not that we're just going from 30 to 60 in the context of this case. The hardship that they're setting forth is they already have a subdivision for three 30,000 square foot lots. That's all they got. That's all they're ever going to have. There's no sewer to hook up to so the only way they can build is with septic. So that's the hardship side of it. Okay. And that's the grounds to grant a variance. Now on the negative side, which we were discussing earlier, is where there be any substantial detrimental impact to the surrounding properties by allowing this variance...or would it substantially impair the zone plan or zoning ordinance. In other words substantially impair the purpose of the ordinance as you just brought up. So you certainly can look at the impact on the other two lots who both have septic on them. The reason I suggest the condition that not only would we have to see the reports from the Monmouth County Board of Health saying that the actual location has now been tested and it can fit but that then should be reviewed by our Engineer in the context of our ordinance because you're right, we're lacking that information and therefore the Engineer could indicate "yes, a septic tank system on this property now seeing all the Board of Health and the engineering information...because it's really an engineering question mostly...will have no adverse impact that he can see. That's why I suggest that as a condition to get that rationale...are we missing something in allowing this septic system on this lot...you knows, from the town's perspective, in the context of that ordinance. And I think our Engineer could give us that impact and therefore you could place that as your condition before the approval and if the Engineer found a problem...well, then either they come back and just work it out with us or they don't meet the condition. That's where I was going with that...because you're right. I think we need a little more input and I wish I could tell you...I know 10 years ago I knew this because it was discussed. We've had

several variances over the years...you know I've been on the Board over 20 years...so we've had several variances for this type of thing...for a septic system on a lot less than 60,000. Usually the circumstances are very similar to this. Prior approval. An existing lot. Now they want to develop it. Now the ordinance is in play. There's no sewers and to my recollection most of those variances have been granted because they could establish the septic systems would not have any adverse impact. And I know there were discussions when the ordinance was a little newer, back in the 90s, as to why that was placed in the ordinances and I just don't recall the engineering explanation, quite frankly, because we haven't had one of these in so long...I just don't recall what that explanation was. That's why I want to get the input of the Engineer at the very least as a condition of approval.

Mr. Brodsky stated if, and I have no problem with something like that and we'll submit it and obviously the septic can go only where it can go. If a septic can't be done here, then the lot can't be developed because there's no possibility for hookup and I think that sort of buttresses the hardship argument to the extent that we have no choice here but to install septic and declining this variance application would essentially render the property undevelopable, even though it was previously approved as a buildable lot.

Mr. Palmieri asked when was that subdivision.

Mr. Brodsky replied '88.

Mr. Lomangino asked why when you have the engineer there, you have the surveyors there, you have everybody there. Why wouldn't they tell exactly where they're going to put the septic system. They did the soil type. I mean it looks like, by the paperwork that you gave us, they want to put it in the front left corner.

Mr. Gabrysiak replied the reason being because we haven't designed the home yet...so before we put in the building application, all that would be included.

Mr. Lomangino said I got you. I'm just saying it would have been so much easier here having that information.

Mr. Battista stated as a relatively new member of the Board, one of the things that I'm learning as people come through is to the point earlier. Engineers come and explain the reason why. I mean we get the reasons why, we get the hardship but we get somebody that's a professional kind of talking to us and then our Planner gets a chance to sort of cross-examine. I'm very familiar with the percolations and my parents have properties up...so I know about septic systems and the difficulties of them but I think it would just be helpful to have at least some bit of back and forth to help me understand.

Mr. Gabrysiak replied we certainly will follow your attorney's guidance.

Mr. Brodsky said I'm just not sure what the Engineer would add. I don't know if you're looking for a specific location as to where the septic would be...because again if the septic doesn't work

Mr. Battista stated it's just hard for me and maybe it's my fault for not knowing why it went to 60,000 but I would put the encumbrance on you to tell me why that doesn't make a difference in this instance. That's all.

Mr. Brodsky said what I was trying to explain was that the other lots of similar size are there, have homes, have septic. Certainly we're not talking about a 5 or 10,000 square foot lot where there would be legitimate issues, real issues with regard to trying to fit a septic on a very small lot with the house. Here we have the room...30,000 is the minimum lot size required if you don't utilize septic. We don't have the option of not utilizing septic so I think it kind of defines the hardship.

Mr. Palmieri stated I think, going forward, is the one thing the Board's going to have to know is why we went from 30 to 60,000 square feet. There's got to be a reason why and I'm not going to press Mr. Hirsch about it anymore. Let's find out that reason why first. If it's just because they said they want to discourage people from building. Whichever the reason was. It doesn't matter. The Board would like to know that first.

Mr. Hirsch said keep in mind too...I mean what the ordinances are designed for...if somebody came in with a piece of land...it was a subdivision. Okay. I'm going to create new lots. Alright. That's in there to say "well, if your new lots can be hooked up to sewer, they can be 30...but if they're new lots because now he's got acreage...are going to have septic, now they've got to be 60,000.

Mr. Palmieri stated if that was the reason.

Mr. Hirsch said so they're in front of us now because they've got a condition they can't change. They got 30,000 and that's it. So that gives them a leg up is all I'm pointing at.

Mr. Battista asked there's nobody to grandfather the fact that half of this stuff was already done like that. You can't grandfather in an existing subdivision.

Mr. Palmieri said pre-existing non-conforming...no, it's not going to work.

Mr. Brodsky stated Mr. Battista, I think that's what somebody thought when they went in on Lot 43.03.

Mr. Hirsch said you had an application tonight earlier for an extension of one year...to get extensions of the protection. That's what you had in the first application. They lost all those extensions on that subdivision. So, now that lot becomes subject to any current ordinance. So they're stuck with the current ordinance...but that also gives them an argument as to why they have a hardship. That's the whole point.

Mr. Lomangino stated you could almost tell because that's when Mr. Hovnanian was starting my development and they probably figured if you put cluster homes and each one had a septic tank, you'd have septic running into septic in neighborhoods. So I can see why they went from 30 to 60.

Mr. Hirsch said you can see the obvious thing on a new development that's coming in with a bunch of new lots...that, well, we're not going to let you do that because we could get saturated. But when you've got a lot here and a lot over there...a single lot that already exists, the situation's a little bit different.

Mr. Brodsky stated I think it's analogous to a situation where zoning...putting aside the septic situation...but where minimum lot sizes change and increase and you're left with isolated lots here and there that are undersized, they can't obviously be legally zoned into inutility and that's how these isolated lot cases come to the Board.

Mr. Hirsch said alright, what we're going to do...about Mr. Hirsch originally said...either going forward with the application and doing something conditionally if the Board was so inclined or the other option would be to let them get their engineers and get some information to our Engineer...and then carry the application to another night until we get to read everything ourselves or just let the professionals handle it.

Mr. Hirsch stated we would have the Engineer report back to us as the condition. I'm not saying you won't know and he would give you a report back saying "I reviewed everything from the Board of Health and their engineer and I find that the septic system will not have any adverse impacts from an engineering standpoint. You'd get that report as part of the condition. I wasn't just saying it's up to him. And then if you get that report, you will review and say "fine, we feel that that's sufficient." Or if it raises a question, you could tell the applicant you want them to come back and ask more questions. If the report is sufficient for you, from your Engineer, after they get all their stuff done, he can say they've met the condition. So nothing is going to happen until you feel confident that you got your own expert telling you it's okay.

Mr. Lomangino asked do we have to ask the public.

Mr. Hirsch replied sure.

Mr. Palmieri opened the floor to the public. There was one person in the audience and he/she had no questions.

Mr. Hirsch said Mr. Brodsky, we should cover a little bit more on the record the fact that there is no land available to purchase to make this lot larger to do away with some of this. I know you had given some information of what's there but why don't we just focus a little bit on Lot 43.02, that's the lot that's also owned by your client or not.

Mr. Brodsky stated he owned it previously.

Mr. Hirsch said alright. Has there been any attempt to request whether any land could be purchased.

Mr. Gabrysiak stated there's no way to get any more land on either side and I've been trying to get Loren Sanders for 15 years to sell a piece from the back and he's not going to do it. The last time he told me "no" was about 30 days. He's in California. He's very happy and he was born and raised in the house on Lot 43.02 and he'll tell you the whole history but he's not selling anything. End of discussion. I've been at it for 15 years.

Mr. Hirsch said well, normally there'd be a letter, a certified letter going to him, telling us...asking him if any land's available and either not getting a response or a negative response for the record.

Mr. Brodsky stated well, I guess that land in the rear would then be creating...

Mr. Hirsch said creating what.

Mr. Palmieri asked how big is the lot to the rear of Lot 47.

Mr. Brodsky said it's very irregularly shaped.

Mr. Gabrysiak stated there's a home back there, a dilapidated home. There's more land but there's wetlands and everything else. Apparently he just doesn't want to sell.

Mr. Palmieri asked do you know how big that piece of property is by any chance.

Mr. Gabrysiak replied I don't know. I think a better question would be how much of it is actually usable and I don't know the answer because the poison ivy is so horrible...I haven't been walking back there lately.

Mr. Hirsch said I mean I don't know how that lot is shaped but I mean just going back from your rear corners...you know if you went back another 100 feet, 50 feet...so you just let us...write a letter. I'll make that a condition. The land's not available.

Mr. Brodsky stated we can certainly do that. We're not looking for another 30,000. We're saying any additional property.

Mr. Hirsch said yeah. Are you willing to sell any additional land to me to enlarge the size of my lot. If so, here's a certified letter. It was sent. It went two weeks ago and I got no response. Fine. Or he sent a response back "no, I'm not interested." Fine. Now, the house on Lot 44, how big is that lot.

Mr. Palmieri stated I think he said he didn't know.

Mr. Hirsch said alright, so that looks like there's a driveway and paved areas running all along your property line and then with the setback of the house...there appears to be no realistic land that could be purchased from that lot. Right.

Mr. Brodsky stated the driveway actually meanders onto this property.

Mr. Hirsch said yeah. And on the other side, that lot is 30,000 square feet also, 43.02, with the septic...so it's already in violation of the ordinance. You wouldn't want to make it any smaller because it would be a further violation...so you could use that as a reason that no land is reasonably available from that lot. Alright. So the only one that I think you need a letter on is Lot 44. So if you were to approve it, I would make it a condition on them being able to supply that letter that that wasn't available. So that would take care of that part of the case that there is a hardship because they can't get any other land. They've only got 30,000 square feet. There is no sewer. Therefore the only way they can build is with a septic. So that's the hardship part of the case.

Mr. Lomangino asked are you looking for a motion to close the public portion.

Mr. Slazyk said I'm still looking for some more information.

Mr. Palmieri stated well, we don't have to do anything. We can request that we get engineer letters and have our engineer review it before we even vote on it. We'll carry it until we get the reports back from the engineer.

Mr. Slazyk said that's what I'd prefer to do rather than close the public portion of the meeting. I mean there's no sense in closing the public portion of the meeting when we're going to have...

Mr. Hirsch stated well, no, if you're going to carry, you're going to carry.

Mr. Slazyk said that's why I didn't want you to jump into that and then all of a sudden open it up again. My feelings are I'd like to see a little bit more information. I'd like to have our engineer review it and I think there's other Board members here that have that same feeling.

Mr. Brodsky asked and the information is in regard to the location of the septic.

Mr. Slazyk replied I think you have to lay #1 – lay out the location, #2 – have our engineer take a look at it and review it, and see if everything's okay. And if our professionals...we have more than just a letter from basically a perc test that you gave us. That's why we've gotten is a perc test. That doesn't really tell us...

Mr. Palmieri said it tells you the soil is okay.

Mr. Gabrysiak stated a question – we have not yet designed a home. Therefore we haven't designed where we're going to put the septic system and all we're trying to do is

to get the hardship variance so we can go ahead with that. I haven't gone to that next step yet.

Mr. Slazyk said but I think you've heard from us about what we want to see and I think if we close this and then we go into a private session...I don't know...I think if it was me, I think I'd get the information, come back with the information because I think that's going to be in your favor.

Mr. Hirsch stated I think the applicant is concerned about spending the additional monies to design the house, do all that, and then for some reason find out he's not going to get the variance...but in one sense, I think what the Board is indicating, you'd sort of be in the same boat even if they made it a condition because you're not going to be able to build...you're going to have to do all of that because the condition...at the very least...the condition of the approval would be that you've located it, you've done your tests in that area, you've submitted it to Monmouth County Board of Health, they've approved it and then that's all given to the Board Engineer. He'll take a quick look at it and say "Yeah, I see no problem here. I see no adverse effect on the other properties or any other problem." You're done. I mean the point is one way or the other you're going to be spending that money with still some risk...okay, even though I think it's probably a very small risk.

Mr. Battista said in terms of placement of the septic, I understand the hardship of having to get a whole site designed around that. I don't think you're looking for that either. I think all we're looking is...all I'm looking for is from 30 to 60...I want to understand the difference there. In terms of where it's placed. I'm personally concerned about that at this point. So I just want to make sure that my point. I don't know if you feel differently but I don't...

Mr. Palmieri interrupted stating that's one concern. There are other concerns. These are all the things the Board needs to consider. I under the 30 to 60, the placement of it, Monmouth County approval, our Engineer's looking at. Obviously, like Mr. Hirsch said, you're going to have to go through that anyway when you're building the thing about where you're placing it.

Mr. Battista said right. I guess we're not going to be able to explain why the ordinance went to 30 to 60.

Mr. Hirsch stated well, see the location is the important thing. If you just kick this back to your engineer now, what you're going to get is "I have no idea." That's what he's going to tell you...because the only way he can tell you if there's any impact is to know exactly what the size is, where it's located and look at the samples of the soil, which is what Monmouth County Board of Health is going to do. They have the jurisdiction, not the town, over approving the septic system but then we ask our engineer, in the context of our ordinance that we wanted 60,000 square foot plots...the Monmouth County Board of Health says it's okay. Do you now, protecting the town, in the context of our ordinance, see any problem. That's what I'm trying to get you, that answer...but he's not going to

be able to give you any real information on that, on this actual lot, until they know exactly where it's at, how big it's going to be. Now, if you want...understanding the new engineer...it's a matter of doing some historical research. He's not going to know why the ordinance was probably adopted either. He may be able to give some general engineering...I mean we can all understand why it's better to have a bigger lot with a septic than a smaller lot. I mean, that's fairly self-evident. So, as I said, whether the town just did to prevent any new developments. Remember, this was way back in 1990...that we wouldn't get a whole bunch of septic tanks on a whole bunch of smaller lots as opposed to not even being concerned about this kind of isolated lot situation. I mean that would have to be some research, whether the engineer did it or...unfortunately, who was involved in 1990 engineering-wise and planning-wise are not around anymore. I'm not sure we're ever going to get that answer. We can ask your current engineer what do you think the purpose was. Is there anything...

Mr. Battista said I just want to make sure...are you telling me...now if you said the placement is important, then if this was a 60,000 square foot lot, we wouldn't be here. Is that correct.

Mr. Hirsch confirmed he wouldn't be here.

Mr. Battista said theoretically speaking, I could take the septic tank and put it on the far right corner and it would not make a difference...is that correct.

Mr. Palmieri stated no. He would still have submit the plans.

Mr. Hirsch said we don't know. I mean it's up to Monmouth County to approve that location.

Mr. Battista stated I'm just trying to understand.

Mr. Hirsch said and then, see where it's located and the size of it, that's what's going...now the engineer, from an engineering viewpoint, can say "okay, this is the problem I see." What I think you're likely to find out...if their engineer does their testing and they find out "okay, this is where we want to put it. Yes, the soils are fine. Yes, we have enough room. There's no shade trees" because you can't have shade and all this other stuff. Monmouth County, who has jurisdiction, approves. More than likely our engineer is going to say "well, fine, Monmouth County thinks it can be done. They say it can be done. I don't see any problem." And this whole ordinance situation...he's probably going to say "well, it's a single lot. It's really not what the concern is." That's most likely what's going to happen here but because the Board was kind of searching for what was the purpose of that ordinance and other than the general discussion we've had about trying to stop new lots and so on and so forth, I didn't have an answer for you so I thought to give you that extra sense of protection you could at least have your own engineer look at the whole picture when it's done...and then in the context of our ordinance say "do you see any problems that we might have missed." That's where I was at.

Mr. Palmieri stated I think a good example is we had a house come before us over on Wardell where we had a septic problem. It was a 2 ½ acre lot but there were a lot of wetlands involved. They ran into problems and there were a lot of variances involved also with the septic having to be placed in the front of the house...because of where it was located and the whole general scheme...and they went through the whole thing, the engineers reviewed everything, went in front of the Monmouth County Health Department to make sure the location was correct...and it was all based on this location and having a structure in the front of the house. So, it's not something that hasn't been before this Board. It doesn't happen that often but it does happen.

Mr. Hirsch said alright, let's decide. What do you want to do with it. Do you want approve it with the conditions or so you somehow want more information. I think we've talked it to death.

Mr. Brodsky stated yeah, we're happy to give whatever information the Boards wants and I'm not quite sure what it is that the Board is looking for but if you tell me what it is you're looking for and you want to carry it for us to provide that information, we can certainly do that.

Mr. Slazyk said I have one quick question. If we go ahead and we vote on this, okay...and we put a stipulation in regards to...okay, before they can go ahead and finally build this, we need the location of the septic. We need the approvals based on Monmouth County. And once we get that, then the approval is based on the condition that those things are met.

Mr. Palmieri added and our Board Engineer reviews it.

Mr. Hirsch stated and he's satisfied that there is no other adverse impact pursuant to our ordinance.

Mr. Slazyk said so they cannot build that until all of that information comes back to us. Correct.

Mr. Hirsch replied right.

Mr. Palmieri stated and that will be a letter from our engineer.

Mr. Brodsky said so that would be conditions of the approval that if we don't meet, the approval folds.

The Board agreed.

Mr. Palmieri said and do you want part of that condition, if anybody has the reason why we went from 30 to 60 or doesn't it count.

Mr. Slazyk stated no, we could care less about that.

Mr. Hirsch said well, that will be part of our engineer's review of all of that...because I will say view that information in the context of our ordinance requesting 60,000 square foot lots. Does he see any other issues that we may not have addressed or is not addressed by the Monmouth County Board of Health.

Mr. Slazyk stated I'm fine with that.

A motion to close the public portion of the Gabrysiak hearing was offered by Mr. Slazyk and seconded by Mr. Lomangino. A voice vote in favor was unanimous.

A motion to approve the bulk variance for an undersized lot to include conditions previously enumerated was offered by Mr. Slazyk and seconded by Mr. Lomangino.

ROLL CALL

Yes: Messrs. Slazyk, Lomangino, Palmieri, Diamond, Battista, and Rickert

No: None

Abstain: None

A motion to adopt the resolution in the matter of McDonald's Restaurant was offered by Mr. Slazyk and seconded by Mr. Diamond. Mr. Rickert was ineligible to vote. A voice vote in favor was unanimous.

A motion to adopt the resolution in the matter in the matter of Robert & Debra Confessore was offered by Mr. Slazyk and seconded by Mr. Diamond. Again Mr. Rickert was ineligible to vote. A voice vote in favor was unanimous.

A motion to adopt the resolution in the matter of Jennifer Larsen was offered by Mr. Lomangino and seconded by Mr. Slazyk. Again Mr. Rickert was ineligible to vote. A voice vote in favor was unanimous.

A motion to adopt the resolution in the matter of 4075 Highway 33 Associates d.b.a. World Volkswagen was offered by Mr. Lomangino and seconded by Mr. Diamond. Not eligible to vote were Mr. Rickert, Mr. Palmieri and Mr. Slazyk. A voice vote was unanimous among the remaining eligible members.

Mr. Palmieri stated that the Environmental Consultant, Merwin Kinkade d.b.a. Viridian, had resigned. It was noted that the Borough Council had previously approved two other environmental consulting firms to handle cases needing an alternate firm. One was Birdsall Engineering and the other was Brilliant Lewis Environmental Services.

A discussion followed and Mr. Hirsch advised that a resolution could be drawn up to appoint whomever the Board desired from those two. It was determined that a resolution be drawn up for the next meeting to be voted on by the Board.

At this time a motion to adjourn was offered by Mr. Lomangino and seconded unanimously.

Respectfully submitted,

Doug Gotfredsen
Zoning Board Secretary