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1 April 2009 THE COURT: This is the regular he
2 meeting of the planning board of the Borough Avon
3 by the Sea, Asbury Park Press, indemnify tune Ocean
4 Grove times, Avon Public Library, Avon board of
5 education and the Avon post office. Compliance
6 with the rules and resolution of the open public
7 meetings law. Fire exits are located in the
8 direction I'm indicating. In case of fire, you
9 will be /-P notified by alarm bell. If you are
10 alerted to fire please move in a couple orderly
11 manner to the nearest exit. I would ask that all
12 /-P cell phones be put in silent mode. Attendance.

13

14 MR. BRAUTIGAN: Mr. Davey?

15 MR. DAVEY: Here.

16 MR. BRAUTIGAN: Mr. Ernst?

17 MR. ERNST: Here.

18 MS. KENNY: Here.

19 MR. BRAUTIGAN: Mr. Mahon?

20 THE CHAIRMAN: Mr. Mayor, are you
21 mere?

22 MR. MAHON: Yeah, I'm here.

23 MR. BRAUTIGAN: Mr. McGovern?

24 MR. McGOVERN: Here.

25 MR. BRAUTIGAN: MS. McLaughlin?

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1 Ms. /PHABG: Yes.

2 MR. BRAUTIGAN: Mr. Owe male?

3 Ms. Placitella>.

4 MS. PLACITELLA: Here.

5 MR. BRAUTIGAN: Mr. Ryan>.

6 MR. RYAN: Here.

7 MR. BRAUTIGAN: Mr. Talmage? Mr.
8 Maloney?

9 THE CHAIRMAN: Here. We have a
10 quorum. There are three cases on the docket
11 tonight, the first case is a carry over of last and
12 month /HRA quirk case appeal of construction on the
13 quirk residence on Roosevelt Avenue. It's my
14 understanding that the appealers attorney was
15 unable to make it /TOFPLT and I would ask for that
16 case to be carried over to next month with no
17 further notices. I do understands that Mr. Cork is
18 here tonight, he would like to make a statement?

19 A VOICE: Yes, I want to make sure
20 there are no more delays.

21 MR. RUBINO: I spoke to him and
22 parenthetically I knew somewhat about the matters
23 he was involved with in Point Pleasant and that
24 it's been going on I had read about, talked to some
25 of the other attorneys involved and he was

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1 concerned about how he was going to handle it and
2 where we were going to fit him in and then we would
3 asked him if you we were going to carry we told him
4 we would give him one adjournment we understand you
5 want to /-P get going on the thing next month would
6 have to be a priority.

7 A VOICE: Okay.

8 THE CHAIRMAN: That case will be
9 carried to the May meeting.

10 MR. RUBINO: No further notices.

11 THE CHAIRMAN: The next case tonight
12 is a continuation of the appeal of the Ray
13 residence on marine place.

14 MR. RUBINO: Before you get started
15 if we could just /-P go over some procedural
16 issues. First of all, I would like to note the, we
17 have appointed Roberta Lang as the assistant
18 secretary to the board and because Mr. Brautigan
19 has been involved in this matter as the zoning
20 officer and at the last hearing he testified we
21 decided that it would be best if he sat in the
22 audience and not sit at the dias as part of the
23 board or as the and board secretary. So we've
24 asked the record should note that Roberta Lang is
25 filling in as the secretary to the board and she

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1 will be the secretary during the course of this
2 hearing. Until it comes to have its conclusion.
3 Unfortunately there is also an issue because both
4 the board and the public and the counsel, clients
5 were all patient and there was a lot of evidence
6 presented at last months meeting, and there was a
7 request to have the hearing take place object that
8 meeting transcribed. Unfortunately, the
9 transcription service called and said that the
10 tapes were pretty much (inaudible) and that they
11 did could not hear them and she could not in any
12 way feel that much she could certify a transcript
13 as being properly done. Myself called her myself
14 and I have asked her I said look we spent at least
15 three, four hours on the matter we were here late
16 is there any way in her opinion she could save the
17 tapes. She did not in any way feel comfortable
18 about she said I could /-P /SPEPBTD more time on it
19 if I had 30, 40 days, I could put something
20 together she said but I could not here the board
21 members. I could not hear counsel. She said I
22 could hear the witnesses but I couldn't distinguish
23 who was making the questions. Who was asking the
24 questions. I couldn't here the board members when
25 they were speaking I guess she couldn't /-PB hear

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1 me either. And a good portion of the testimony
2 itself said she was just /-P inaudible so she did

3 not feel /-P she could in any way transcribe those
4 take place. I spoke to both Mr. Vella about this
5 and Mr. Ben and my feeling as the board attorney
6 that we would be better off just starting from
7 scratch and starting all over /-P again, rather
8 than consider this a new hearing, continuation of a
9 hearing from last month that we start there the
10 very beginning. Counsel make an introductory
11 remarks, there was some objections made, some
12 rulings made, and that we start all over again.
13 Mr. Middleton do you have any objection to
14 proceeding that way.

15 MR. MIDDLETON: No, I do not.

16 THE CHAIRMAN:

17 MR. RUBINO: It other than being
18 unhappy Mr. Vella do you have any objection?

19 P. ATTORNEY: I don't really have a
20 choice, no.

21 MR. RUBINO: I would also like to
22 note Mr. Vella did raise a question as to
23 participation by the board. Mr. Gorman in the
24 hearing process at the, who was appearing both as a
25 party and as a witness and is also some question as
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1 to Mr. Brautigan serving as both the board
2 secretary, and as the zoning officer. So, before
3 we get started going any further, I would like to
4 ask the board and /POEFL the board, does anybody on
5 the board feel that they cannot be fair and
6 impartial during the course of this hearing as a
7 result of one Mr. Broad began testifying before the
8 board and being the board secretary? And testing
9 whether you would be fair and impartial, you would
10 try and consider whether you might give his
11 testimony anymore weight than any other person's weight
12 or whether or not you might lean a certain way
13 because you do know them. Maybe we could just pose
14 the board does anybody on the board feel that they
15 would be prejudiced or that they could thought be
16 fair or impartial because of Mr. Brautigan
17 appearing before the board as a witness?

18 MR. RUBINO: Seeing none I'll ask the
19 same question with regard to Mr. Gorman. Mr.
20 Gorman is a commissioner in town who has taken part
21 in appointing certain board members I don't know
22 how many board members, but he does a, reading the
23 law he does have a right to appear before the board
24 but /-PB again I believe we should ask the question
25 anybody on the board who does not believe they
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1 could be fair and impartial during the course of
2 this hearing or they would be in any way prejudiced
3 in this matter as a result of Mr. Gorman appearing
4 before the board as both a party and a witness?

5 MR. RUBINO: Seeing none, I believe we
6 can proceed.

7 ATTORNEY: Counsel, may I just
8 quickly interject on those two issues. First with
9 respect to the potential conflict with the board
10 hearing being conflict with respect to Mr. Broad
11 began, I know I never made that objection. That is
12 normal course zoning officer takes the testimony
13 that's not, was never raised by me and I don't
14 really.

15 THE CHAIRMAN:

16 MR. RUBINO: I know you did not raise
17 that but I was concerned about it and I looked it
18 umm and I thought we should address that before we
19 get started.

20 MR. VELLA: With respect to the
21 second issue it was testified testify last meeting
22 that Mr. Gorman did appoint two specific board
23 members and while I believe that, while I do not
24 believe the legal test is that in whether they feel
25 there a conflict there is an appearance of I am pro

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1 will prior to when board members are deciding cases
2 by an a appellat that appointed them to their
3 position. So, I don't think that.

4 MR. RUBINO: I have looked, I took
5 your objection seriously and I did look for case
6 law to see if there was any cases. I'm not saying
7 I'm the best researcher in the world, is there any
8 case that you have that I can.

9 MR. VELLA: I think it's a very
10 standard /APLZ of I am pro prior to I just note my
11 objection as noted for the record.

12 MR. RUBINO: I did look to see if
13 there was any case law, there hack case law where
14 member of the governing body have appeared before
15 boards and there is case law on it. The -- I did
16 not find the case that says that because they are
17 member of the governing body or if they did a point
18 anybody, that they -- that whoever has been
19 appointed by that person should step down. And I
20 took that very seriously and I did research it.

21 MR. VELLA: I just want to make might
22 have objection because we don't have a tape of
23 might have last will objection.

24 MR. RUBINO: We have it written down.

25 MR. VELLA: I've got to repeat any

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1 apologize to the board its dajavue it is ground
2 hog's day and you are going to say I heard this
3 stuff already but obviously I have to /-P repeat
4 and /STO does counsel and the witnesses so I do
5 apologize if you've heard all this stuff before.
6 There is -- obviously there is a lot of issues but

7 there is one issue in the sense that it was kind of
8 thought of, singles this is an application of an
9 appeal where a split board, the zoning board would
10 only here this case and I know you're smiling
11 because you know where I'm going with this,
12 obviously the mare and the counsel liaison can /-P
13 not here this case which in my opinion means this
14 should only be seven voting members to decide the
15 case. Hour, in recent litigation with the borough
16 of Avon planning board the borough attorney, board
17 attorney has taken the position that while the mare
18 and counsel lie say on step down, alternates are
19 permitted to step into their place and there will
20 be nine board members is the quorum.

21 MR. RUBINO: Not sure where you're
22 coming from with that can you hear me.

23 MR. VELLA: Yes I can my point is is
24 the board going to have nine voting /PHOEBES or
25 seven /SHROET /-G members?

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1 MR. RUBINO: Are you saying that our
2 may or commissioner should step down?

3 MR. VELLA: Absolutely.
4 Ma /PHABG /PHABG /PHABG abstain.

5 MR. RUBINO: If you can't participate
6 you don't abstain either /SRER to step down.

7 MR. VELLA: Well, it's my -- my
8 understanding that while it's a dual board, that
9 they, the dual and board performs of the function
10 of planning board and of the zoning board under the
11 municipal land use law only the zoning board has
12 certain powers, one /EPL of them is a /SAOUS and
13 board two is appeal of zoning officer
14 determination. A third is a height variance. And
15 another is an interpretation. Those are powers
16 solely bound in the zoning board powers under
17 specific statute. The dual board acts as zoning
18 board and planning board. It's my position that
19 you can't act as a planning board and other
20 planning board only difference between arrest
21 planning board and zoning board for parenthetical
22 reasons is the mare or and the counsel liaison is
23 part of the planning board but obviously not part
24 of the zoning board. So, it was always been my
25 impression of my understanding of the law, that

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1 when you're dealing with zoning board powers only,
2 the mare and the counsel liaison cannot act because
3 they are not part of a general zoning board because
4 technically if a use variance is granted or
5 something.

6 MR. RUBINO: /STHAS in the statute.

7 MR. VELLA: Yes.

8 MR. RUBINO: Where?

9 MR. VELLA: That the zoning power you
10 only as joint.

11 MR. RUBINO: In the joint statute in
12 the statute allowing the municipal late to form a
13 joint.

14 MR. VELLA: At no position, it
15 /SAEULGS you're ash loud the planning board can use
16 joint, that you can join the boards and it's really
17 obviously for economic deficiency.

18 MR. RUBINO: Does not, the statute
19 does not change the composition of the board. It
20 just says that in use variances the mare or and the
21 counsel person cannot sit.

22 A VOICE: That's correct.

23 MR. RUBINO: It doesn't /-P say that
24 the come position of the board changes /TPH-S any
25 other case.

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1 MR. VELLA: I'm asking the board for,
2 because you've got to remember, the last time the
3 board proceeded with four board members to vote and
4 now it is alleging that they didn't have a quorum
5 when they provided so.

6 MR. RUBINO: My feeling is and my
7 ruling would be that there is a nine member board
8 and that the commissioner can serve.

9 MR. VELLA: That's --

10 MR. RUBINO: However, I should state,
11 Mr. Ma honest, if you feel you have a conflict,
12 that you cannot sit, then you have to tell us now.
13 I'm sorry, may or ma honest.

14 A VOICE: I'm not sitting.

15 MR. RUBINO: And Mr. McGovern?

16 Mr. McGOVERN: I don't feel that I
17 have a conflict.

18 MR. RUBINO: Okay. Then unless
19 something comes up during the course of the /-P
20 opinion it's my opinion that he can sit on the
21 interpretation.

22 MR. VELLA: Fine I want to note /T-B
23 for record.

24 MR. MIDDLETON: I agree with that
25 interpretation. I also want to note it in terms of

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1 the appoint ment issue there is a case holding that
2 if a commissioner does appoint board members that
3 it does not disqualify the board members per se.
4 How many board members here were appointed by Mr.
5 Gorman?

6 MR. RUBINO: We can ask the chairman,
7 I guess.

8 MR. MIDDLETON: I'm sorry I'm just
9 curious.

10 MR. RUBINO: Appointed by.

11 ATTORNEY1: At the last hearing, Mr.
12 Gorman /-P pointed to two board members who he
13 appointed specifically.

14 MR. RUBINO: I don't think attorneys
15 you should be asking questions I think you should
16 request of us if we would ask that question.

17 MR. RUBINO: I should and note the
18 happen appointment is not made by individual
19 commissioner its made by the entire governing body.
20 Majority of the governing body.

21 MS. KENNY: The letters that I
22 received was from the may or.

23 THE CHAIRMAN: There were three
24 members that were appointed in January, Mr. Gorman
25 and the commissioner I can tell you the three

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1 members, Sandra McLaughlin, Marie Kenny and Sal so
2 two of the much present members were a /-P pointed
3 in January by the current had commissioners and
4 mare or of which Mr. Gorman is a current member of.

5 MR. MIDDLETON: And the reason I
6 raise the issue is I'm trying to avoid, got to turn
7 my power on -- sorry. I'm trying to avoid creating
8 an appealable issue that's the reason I have raise
9 the issue. So, may I have a minute to confer with
10 my client on that issue.

11 THE CHAIRMAN: Sure.

12 MR. MIDDLETON: Thank you.

13 MR. RUBINO: Mr. Cook has the answer
14 for us.

15 /#-679D good enough.

16 THE CHAIRMAN: To preface a statement
17 I made earlier there was three new members
18 appointed in January but there were three other
19 members that were re appointed in January by the
20 current commissioner in May had which I believe
21 with earn, jack /RAOEURPB and.

22 A VOICE: Everyone here.

23 THE CHAIRMAN: Mare /HREUPB /RUS.

24 A VOICE: And also Vincent earn /-P.

25 THE CHAIRMAN: /THOEUS are the three

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1 recent one plus the three other ones I mentioned
2 earlier. Check check that was /TKAEF that said
3 that's all of us.

4 THE CHAIRMAN: So it would be eight
5 /ET voting members you've got five of them. We
6 have appointed or re appointed in January for the
7 current commissioners.

8 MR. MIDDLETON: Okay.

9 MR. RUBINO: I want to address that
10 last issue Mr. Vella raised an interesting be
11 issue. There is a special statute on /AUR /HROUG
12 joint be boards that does leave some questions up

13 in the air and Mr. Vella could be right on this or
14 I could be right on this. It has not been resolved
15 by case law and the legislature should really as
16 far as I'm concerned, fill in the blanks in the
17 statute. So, unless somebody can show me I'm wrong
18 somewhere, I feel that you unless the board is
19 hearing a use variance, where the two members of
20 the governing body by statute have to step down,
21 then the board has, planning board as a nine member
22 capacity and you don't shift hats from planning
23 board to board of adjustment depending upon any
24 case except a use variance where the statute says
25 you've got to shift hats.

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1 So, as I said I might be wrong on
2 that but that's my opinion. /OEUBGS?

3 R. ATTORNEY: Okay.

4 MR. MIDDLETON: Mr. Mr. Chairman /H-P
5 may I proceed with an opening?

6 THE CHAIRMAN: Yes, you may.

7 MR. MIDDLETON: Members of the
8 poured, my name is Timothy Middleton, I respect
9 frank Gorman and Kevin McGorry regarding a an
10 appeal that was filed by them pertaining to other
11 zoning permit that was issued by cliff Brautigan
12 concerning the addition of a third floor of a
13 two-family residence located at 509 marine place
14 /-FPLS known as 509 and a half and 509. What
15 you're going to hear tonight is testimony from
16 Mr. Brautigan that in August of 2008, he was
17 approached apparently by an architect who
18 represented the race, she met him apparently at
19 town hall, and there is a set of plans which we'll
20 mark later but it showed addition to this home
21 you'll hear him testify that he did not realized at
22 the time that this was a two story, I mean a
23 two-family home. There was no indication on the
24 plan that this was a two-family home. This
25 identifies 509 marine place, which would imply it's

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1 a /-P single family residence as opposed to 509 and
2 509 and a half. Initially rejected the plan
3 because it had apparently a third story balcony
4 which would have necessitated a variance according
5 to him. He marked the plan and since you said come
6 back with a revised plan and issue a zoning permit.
7 Revised plans were submitted in November, 20008,
8 the balcony was eliminated there was after slight
9 modification to the /SRAOE advised plan. Unlike
10 the first plan, it showed a living quarters on the
11 first floor. So really the differences are between
12 plan one and plan two is plan one had no living
13 quarters shown on the /TPHREURS floor, was a blank
14 two did according to broad began, his main Ken was

15 with the third floor issue so he kind of skipped,
16 reviewing the plans in detail on the second review
17 and approved the plans. Again, not knowing that
18 this is a two-family home. As I indicated at the
19 last meeting, it's beyond a doubt that zoning 101
20 that expansion of a preexisting nonconforming use
21 in this case, a two-family home had in a single and
22 family residence automatically triggers the use
23 variance. So, his testimony is I didn't pick up
24 this zoning 101 issue because I didn't know it was
25 a two-family residence. I should add, too, that
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1 notwithstanding it's a two-family residence, as far
2 as I'm concerned, the plan even if it was a /SEUPL
3 family residence needed a variance because it was
4 an undersized lot and it was an expansion. So,
5 with that, I'll put that over here for a second,
6 but we know that in his opinion, he didn't
7 understand it was a two-family residence and that's
8 why he issued a permit. We then have a permit
9 /EUBD in, construction permit issued in early
10 December. You're going to hear testimony tonight
11 from my clients that they didn't really notice any
12 construction at the site until the week of
13 January 23rd or there /PW-GS. Mr. McGorry is
14 going to testify that he went away on the 23rd
15 which was a Saturday, January 23rd, couple days
16 before that he noticed something going on at the
17 site. He apparently went to Georgia for the
18 weekend, into early in the week after with I wife
19 when they came back they noticed the addition which
20 was in their opinion substantial. That was on or
21 about the 28th. You're going to hear testimony
22 from Mr. Gorman and Mrs. Gorman, Mrs. Be /TKPWO man
23 is going to testify that /TKAOURPBG the week of the
24 28th, early in the week she's walking her dog,
25 notices something going on there. . Mr. Gorman pan
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1 will testify that he's up at five or six in the
2 morning, back at night and on the weekend of the
3 29th or there about, the 30th, he notices on a
4 Saturday I guess he's outside looks up and much he
5 sees this substantial truck church. I will proffer
6 to the board, I know we're not going to finish
7 tonight, that the letter carrier in the area was
8 away this week but shell testify that she came back
9 after the Martin Luther king holiday weekend which
10 was on about January 20th, 21st, that's the first
11 time she noticed anything. That is proper. These
12 dates are important. I'm kicking around the two
13 first, the 23rd, the 28th because the law is pretty
14 clear. What the law says is if a permit is issued
15 by a zoning official a member of the public,
16 interested party has the absolute right to file an

17 appeal of that permit within 20 days of the
18 issuance of the permit or more important in this
19 case, within 20 days of when they should have known
20 about it or did know about it. So the dates are
21 important. Clearly the race are going to try to
22 establish that they were constructing or performing
23 substantial construction early on, although I think
24 the testimony tonight and the testimony from the
25 letter carrier is going to substantiate our

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1 position that substantial work on the exterior of
2 the building was performed around of the 22nd, 23rd
3 or 24th of January. I should note that after Mr.
4 Gorman comes home on that weekend, he was walking
5 outside and notices the construction. He has as
6 the wife said went /PWA lift I can and immediately
7 on that Monday or Tuesday it was a February 3rd,
8 files an appeal of the issuance of that permit with
9 Mr. Broad began. N J S M 40 /KOL 55, D-72 provides
10 that the aggrieved party can file the appeal within
11 20 days and they filed the appeal by had submitting
12 an objection slash appeal to the zoning officer
13 indicating that they object to in this case
14 issuance of a zoning permit and they request that
15 he transmit the appeal to the planning board. That
16 letter was previously marked by the board, we'll
17 mark it again, but that letter was again drafted
18 and written by Mr. Gorman mandated February 3rd,
19 2009, hand delivered to the office and as far as
20 I'm concerned, that is when the appeal was filed
21 and was well within the 20 days pursuant to our re
22 correct /KWRAEUGS of the construction. Note worthy
23 is when you look at the building permit mitt, and
24 building information you'll see that the first
25 sheathing inspection performed by the race was on

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1 February 26th, 2009. I would -- I would make it
2 very clear to the board that one wants to have
3 inspections as soon as possible after work is done
4 if one is contracting and building a home and that
5 the fact that the sheathing inspection was done on
6 the 26th of February is significant because it ties
7 the work closer to where we think it was done as
8 /POE he is today the December or January as the
9 race a allege. After Gorman /TPAOEULGS the appeal,
10 as far as I'm concerned he did everything he had to
11 understand the statute, McGorry contends the
12 attends the February board meeting here and
13 apparently at some point during the meeting I think
14 towards the end of the meeting he gets up put his
15 /-PB hands up and /WAURBGS toward the podium and
16 begins complaining about the ray building
17 indicating according to him that he thought it was
18 done improper, improperly and zoning permits is not

19 an issue at which /-P point from what I gather the
20 board tells him you know this is not our issue
21 because you've got to deal with Brautigan and file
22 an appeal I'm not sure if the board knew at that
23 point that Gorman had already written a letter
24 February 3rd which he did in accordance with the
25 statute. McGrorry will testify that the next day
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1 he visited town hall, talks to Brautigan, and broad
2 again supposed to give him a it papers but doesn't
3 appeal papers doesn't have them I don't know for
4 what reason and McGrorry will provide information
5 regarding that issue tonight. Apparently annual
6 few days later, Brautigan provides Gorman and
7 McGrorry with the appeal papers. And indicates to
8 both that one of you should file the application
9 because there is a \$900 filing file if you both
10 file it will be \$1,800 McGrorry puts his hand up,
11 he /TPAOEULGS the application which is in effect to
12 in my opinion does thought have to be filed because
13 Gorman files the letter on the third but as this
14 /PWEUZ /SARD fact pattern twists and turns, moves
15 forward, McGrorry then fills out this application,
16 gets it lift is the property owners within 200 and
17 fold feet is told you have to have everything into
18 town hall at least /-P ten days before of the next
19 hearing. So, February 25th, that's just about ten
20 or 11 days before the next hearing, McGrorry has
21 the notices mailed to the property this owners
22 within 200 feet, puts the notices in the paper and
23 hand delivers to broad began on the 25th is that's
24 why be McGrorry appeal is dated the 25th, its again
25 the /SERP between bizarre fact pattern begins to
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1 move forward and hands it to Brautigan and we then
2 have a hearing earlier last month. So, our
3 /POEURGS on the 20-day rule is we have to, I have
4 say we collectively ma grower Gorman acted as soon
5 as they practically could have acted. /PHAG knew a
6 few days before /TKPWOR, /TKPWOR Monday knows the
7 lift through his wife /TPAOEUFLS on that Monday,
8 February 3rd and that in my opinion is is well
9 within the 20 days. The second issue is the /AOE
10 stop peddle issue which I won't be on detail
11 tonight /-P I believe there has been a stop work
12 issued to the race as a result. One of of this
13 defenses could be a he is stop peddle that they
14 recently relied on the permit issued by Brautigan
15 its appear very complicated legal issue, but I'll
16 summary it in do you believe sentences. If a
17 building permit mitt or zoning permit is issued by
18 a zoning officer and its questionable, you know,
19 it's one of these questions that go either way,
20 maybe you know, calculation of height, on a corner

21 lot, we'll use the curb line as the as the
22 measuring stick, maybe, you know, there is a
23 question of exactly where you measure if, you know
24 maybe cliff blows the issue and is wrong but its
25 questionable those types of issues are normally,
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1 normally favored for the homeowner and in those
2 types of cases you have he is stop peddle and the
3 homeowner, typically could win. In cases such as
4 this where is there is such an /AOE grow /SKWRUS,
5 egregious clear cut violation of the zoning
6 ordinance, I can find no case in this state which
7 has ever held in favor of the homeowner. Of the
8 Court's are clear in this case I brought it in the
9 last hearing, you know, the race had a an architect
10 the architect is licensed the architect is paid
11 probably good money to prepare the plans. The
12 architect was aware of the zoning issues, of the
13 arc /TEBLGT had had the absolute observation to
14 observe the zoning cord architect had the absolute
15 obligation to indicate on the plans this was a
16 two-family home, the architect had the abs you
17 Lieutenant obligation to be candid with broad and
18 tell /-P him it was a two-family home and the
19 Court's do not /TPAEUF cases like this where there
20 is egregious violation, especially where the
21 applicant in this case is represented by a
22 professional had architect. I /-P pointed out the
23 /TKPWRAZ sew case the last hearing I went into
24 /TKAOE /TAEUFL, that was a Spring Lake Heights case
25 where.

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1 MR. RUBINO: /-P let's not.

2 MR. MIDDLETON: Okay.

3 MR. RUBINO: We have.

4 MR. MIDDLETON: I have a closing /-G
5 argument, I'll and go back with my closing, but
6 that's essentially summary of you.

7 MR. RUBINO: I did and because we have
8 to restart, I understand why you didn't get it, but
9 I'll be frank with both of you I'm still wrestling
10 with that issue from a legal /-P stand /-P point.
11 The cases that I've read dealing with this he is
12 stop peddle issue has been where the town issued a
13 stop work order and the applicant has Comp. Before
14 the board asking for relief for variances /-FLTS
15 the relief was denied and the /PHEUBGT or I should
16 say the developer, the building, /ER builder did
17 take that action to court and said the town should
18 be he is stopped from letting me do it. This is a
19 little bit different swear where we're talking
20 about a homeowner and I have -- I haven't found
21 appear case and I've asked both of you to see if
22 you can find happen case to address one side of

23 that issue /ORB not. /SOFPL I would rather not
24 really get into that we're going to take some
25 testimony on it and I think by the time we get to
0026

1 the next hearing, hopefully, we'll be able to get
2 some /PHOEPL knows from each of you and I'll give
3 my opinion to the board as to where we stand, okay.

4 MR. MIDDLETON: Thank you.

5 THE CHAIRMAN: All right. Mr. Vella
6 regarding that issue.

7 MR. VELLA: Okay.

8 MR. MIDDLETON: I would like to
9 proceed with my first witness.

10 MR. VELLA: Well --

11 MR. RUBINO; Mr. Vella I believe you
12 I noticed by the way he's tapping his leg /STAT
13 very /-P patiently while you went through your
14 openings.

15 MR. VELLA: No, I think again, since
16 this is day gentleman view, I do have to, I would
17 like to make an opening statement with respect to
18 issues and also set forth some objection is that I
19 put into the last record. With respect to this
20 appeal. I think the board has to gap peddle with a
21 /PUPB of issues and one of the issues as counsel
22 for the objectors or appellants if you will, this
23 20-day I object, the law is very clear that you
24 have 20 days to file an appeal of a permit when you
25 reasonably should have known that something went
0027

1 on. That's what the law is. There is no exception
2 of egregious errors and I will get into that. So,
3 the poured is going to have to come to grips with,
4 and make a decision of when should the appellant
5 which we'll talk about later when did he reasonably
6 know that construction had begun and they didn't
7 file there complaint within 20 days, there
8 complaint is dismissed, period.

9 What you're going to she over the
10 course of this hearing and I know some have already
11 heard it already, but you will hear that plans were
12 submitted in August. They were reviewed. Changes.
13 In November, plans were re submitted and a
14 building, building permit mitt was not issued until
15 December 2nd, 2009. In November.

16 MR. RUBINO: Eight.

17 MR. VELLA: Thank you. I apologize.
18 In November of 08, Mr. Brautigan received copies of
19 plans. His job is to review them. This idea that
20 he was only concerned with a couple pages is quite
21 honestly, it be seeking his duties, his job is to
22 in had review of the plans submitted and give
23 zoning permit. You will hear him testify that he
24 got to revised and only looked at like one page.

25 Well, we submitted 100 percent truthful plans. And
0028

1 how do we know that? Is the race tries trying to
2 hide the fact that it was a two-family home,
3 absolutely not. The borough of Avon knew with
4 100 percent certainty prior to the issuance of a
5 building permit mitt that this was a two-family
6 home. That is not in question at all. You will
7 see evidence that when my clients bought the
8 property it was a two-family. On the CO it was a
9 two-family. But more /-P importantly, when the
10 plans /-P submitted in November, these revised
11 plans they were given to Mr. Broad began who
12 reviewed them and for some reason back dated them
13 back to August. However, construction department
14 also reviewed them. What did the construction
15 department do when they got the plans? They
16 reviewed it and wrote a letter to my client.
17 Specifically requesting quote, need additional /-P
18 zoning review for two-family home. That's on
19 November 19th. Almost two plus weeks before
20 building permit mitt was issued that a review of
21 these plans /-P clearly show it's a two-family home
22 why, you see there is two kitchens, two bath rooms
23 two living rooms two bed rooms offer different
24 floors so the building department of the bore of
25 after says /WA woe woe wait a minute, this is two

0029

1 family home let's go for zoning. We have to find
2 out was this accurate, what do they do? They then
3 do their investigation, contact the pour row
4 because they are borough employees and then /KORPB
5 if I remember that it is a preexisting two family
6 house. Now how do we know that they do that,
7 because on the same letter that they sent my
8 clients, they put it, they additionally write
9 existing two family okay. The borough of Avon new
10 100 percent certainty that this was a two-family
11 residence and my clients /-P given a building
12 permit. Why Mr. Brautigan for some reason does not
13 know that when the construction department borough
14 of after those it, when the plans clearly show they
15 do it is beyond me. But for some reason, the
16 commissioner and the applicants say because
17 Mr. Brautigan made an egregious error you've got to
18 require him to tear down his addition that he spent
19 \$60,000 in reliance on that knowledge permit. Now,
20 the reliance issue is very, very important I'm not
21 going to get into the law counsel. But you will
22 make a decision whether might have clients
23 reasonably relied on the building permit. And what
24 is reasonable reliance you're going to have to
25 decide that. Is reasonable reliance when the

0030

1 borough knew it was a two-family and got a building
2 permit, didn't lie on any forms, there is nothing
3 that one document that says that it says definitely
4 not a 27 fame /HREU, the borough knew about it and
5 issued plans. As a result of that permit and /-P
6 only the result of that permit that was issued by
7 the borough of after, knowing it was a two-family
8 home did my client spend approximately \$60,000
9 already until the stop work permit was issued. Now
10 you'll hear stop work per well that's on appeal to
11 the construction board of appeals. So that really
12 has no bearing before you at all. Another board
13 will hear that but that's what you have to
14 determine. Is this 20-day and reasonable reliance
15 if you determine that the applicant was /-L filed
16 within 20 /TKAEUGS, you still have to determine
17 whether my client reasonably relied on this permit
18 and you are he is stopped from stopping him to
19 could complete that construction.

20 And you'll hear that through the
21 evidence. Now, with respect to my pre case
22 objections, as I went on a die it tribe last week,
23 I am objecting to Mr. Gorman as an appellant, as
24 an applicant in this case. While you heard that a
25 letter was filed by him on February 3rd, 2009,

0031

1 which we agree that he sent the letter in, under
2 the ordinances of the bore of after if you were
3 going to file an appeal you have to pay \$900
4 filing fee. You have to file a W nine. And to get
5 before this board, you have to give notice to
6 adjourn /-G property owners and at the last meeting
7 where there is no tape I will put on the record
8 right now that at the last meeting when the
9 applicants closed their case, the only pen that
10 testified was Mr. Gorman. The McGorry wasn't here
11 and didn't test. I object then and I object now to
12 Mr. Gorman as the applicant or the appellant at
13 all. What has he done? He's filed a letter
14 complaint, has he paid the fees that's required by
15 every citizen of the bore of after, the answer is
16 no. Has he filed a W-9 which is required by every
17 citizen of the Borough of Avon the answer is no.
18 Did he notice to adjourning property owners that he
19 is the appellant in this matter the answer to that
20 question is absolutely no. You will see the
21 records that the only, when you look at the notice
22 given by the McGorrys Mr. Gorman's name is not /-P
23 found there at all. Why is that? Why is he hidden
24 from the notice requirements? He is not the a
25 appellant here. The McGorrys are. Be they filed

0032

1 a complaint, they paid there fees, they noticed,
2 period. No where in the notice of hearing that was

3 issued that's required by the ordinance does it say
4 that Kevin, Renee McGorry and Mr. Gorman are the
5 appellants, absolutely not. Doesn't say that at
6 all. And what you will hear testimony that he
7 admits I didn't pay those fees, and his answer, is
8 that Mr. Brautigan told him you don't have to.
9 Where in the ordinance.

10 MR. MIDDLETON: I object and by the
11 the way that's not what he said.

12 MR. RUBINO: We're not going to go
13 into what was said and I should, counsel have been
14 both of you have been and I'm allowing Mr. Vella to
15 go on because Mr. Middleton was detailed in his
16 opening, I /PHAOEP we're going to be getting who
17 said what when the witnesses are going to be
18 appearing so --

19 MR. VELLA: I'll cut it short you
20 know we did go through this very long but the
21 record is not the record anymore. We object to Mr.
22 Gorman as an applicant. We object to anything of
23 any decision filing his notice as required within
24 the 20 days. We object to anything related to that
25 because he didn't pay. He didn't file the W-9. He
0033

1 have did not notice. How he became the only
2 witness in the case, the last time /WOUFLT ever
3 paying a fee, without ever doing anything is beyond
4 me. And we ask the board to decide that a person
5 who doesn't pay the fee who doesn't do his W-9 who
6 doesn't notice should not be the applicant in
7 this case. The only /-P person is the person /HO
8 noticed is the McGorrys and I think you've got to
9 apply the same standard to every citizen in after
10 and no exception toss anybody. So I believe that
11 the only witness, you can have other witnesses but
12 the only applicant is the McGorrys. Of the
13 commissioner, he's not. He is not. Because he
14 doesn't pay the fee, he doesn't do any of that.
15 Therefore, he is not /-P the applicant and he is
16 not the reason why we're here tonight period.

17 MR. RUBINO: Well, I think Mr. Vella
18 the issue with regard to Mr. Gorman and
19 Mr. McGorry is I believe that somebody marked in
20 evidence a letter dated February 4th.

21 A VOICE: Third.

22 MR. RUBINO: I'm not sure if it was
23 had received I think this the third might have been
24 it was either received in town hall the third or
25 fourth of February owe nine so the question becomes

0034

1 whether that cuts off the 20 days or whether the
2 McGorry letter, the 25th, 26th, whether that
3 starts the the 20 days. So, I think we what we
4 should do is here the evidence and we'll try and

5 make a decision. Based upon the evidence that's
6 prevented. I think Mr. Mill ton definitely has the
7 right to go forward.

8 R. ATTORNEY: May I respond to that?

9 MR. RUBINO: I don't think you have to
10 respond it it. I mean I feel much comfortable that
11 the board should /TPOE forward with the case. And
12 here what evidence that you have to present. And
13 just -- do you have anything further Mr. Vella.

14 MR. VELLA: No tone attorney I would
15 like to just say a couple things before we get
16 start to the board. One, there will be a couple
17 issues inadvertent case that I don't want to be pre
18 sum /WUS what they are going to be but there will
19 be an issue as to the 20 days that you've heard ban
20 /TERD back /KP-BG forth by both attorneys. The law
21 is that an object to is supposed to file an
22 objection to the issuance of a zoning permit within
23 20 days after it has been issued. How much, it
24 would be impossible for people to know when a
25 building or zoning permit has been issued where the

0035

1 developer doesn't start believe for five, six
2 months down the road. So the case allow offers an
3 exception to the hard application of the statute
4 and says the 20 days starts running when the
5 objection tore knew or should have known and that's
6 the standard that should be applied. And the
7 evidence is to be -- will be presented by both
8 sides as to when they believe that clock starts
9 ticking so I believe that would be very important
10 part of the case that both parties have a right to
11 give us evidence, give you evidence as to when they
12 believe the clock should have started ticking. And
13 it's not a hard and fast rule, but I should note
14 that the -- there is some question let's say
15 hypothetically you're going to, in the neighborhood
16 where all the property own necessary are, do not
17 live empty area and they are all summer house and
18 they don't come down the shore during the summer I
19 mean they only come down the shore during the
20 summer and they don't come down during the winter.
21 If somebody starts building in January, the fact
22 that the people in the area don't come down to
23 until Memorial Day does thought give them any pause
24 for argue /PHE meant saying well I shouldn't have
25 known because I'm not there. It's the facts on the

0036

1 ground when the clock starts ticking. So the clock
2 starts ticking what you want to listen to is what
3 evidence is offered as to when development,
4 somebody reasonable person knew /O should have
5 known that some development was going on on the
6 premises and that would be a very important issue

7 and will probably be hearing it testimony on that
8 both tonight and /WHE we come back and we can
9 discuss that at the end of the meeting, okay.

10 MR. VELLA: Okay.

11 MR. RUBINO: Mr. Middleton.

12 THE CHAIRMAN: Do you want to
13 proceed with your witnesses?

14 MR. MIDDLETON: I'll proceed I'll
15 call Kevin McGorry.

16 Sworn sworn Kevin McGorry.

17 MR. MIDDLETON: Kevin could you state
18 your name for the record and where you reside?

19 THE WITNESS: My name is Kevin
20 /PHABG. I reside at 507 Sylvania Avenue.

21 Q. Do you live there with your wife?

22 A. Yes, I do.

23 Q. And how long have you lived there
24 for?

25 A. Since 93, I think.

0037

1 Q. Okay. And are you familiar with the
2 property located at 509 and 509 and a half marine
3 place?

4 A. Yes, I am.

5 Q. And could you tell the board where in
6 relation /TOPG your property is 509 and 509 and a
7 half marine place?

8 A. 509 is right next to we have a little back
9 cottage next to us is a stone how is and behind
10 that is the 509 marine place.

11 Q. Okay. How many feet would 509 and
12 509 and a half be from your house?

13 A. Well, it butts up to our background the back
14 of our property where we have a little cot tag.

15 MR. MIDDLETON: Okay.

16 Q. Kevin, this is as you probably
17 understood from of the openings given by both
18 counsel, the issue I want too much really hone in
19 on tonight with regard to your testimony is when
20 you first noticed construction at 509 and 509 and a
21 half /-P marine place, okay?

22 A. Okay.

23 Q. Bearing that in mind, could you, I
24 guess, describe to the board when you first noticed
25 construction at that property?

0038

1 A. Well, the first day that I noticed the
2 construction I was -- I had had a business trip to
3 Georgia on Sunday, January 25th. And a couple days
4 before I left, I noticed that there was work being
5 done at the, at marine place.

6 Q. So using /TKPEUGS the trip as a an
7 I've /ER or base /-P point?

8 A. Correct.

9 Q. You're saying a few days before that,
10 so the 25th is a Sunday?

11 A. Correct.

12 Q. Okay. So few days before that you
13 have noticed something going on?

14 A. Yes.

15 Q. And can you describe to the board
16 what you noticed?

17 A. Ah, I just noticed that there was, there was
18 some nailing and hammering on some boards and
19 really I didn't notice much. I just knew that
20 there was something going on.

21 Q. Did you actually see it or did you
22 hear it?

23 A. I heard it.

24 Q. And what what time of day did you
25 hear it?

0039

1 A. Ah, it was Friday afternoon and I was
2 getting ready to go out and I was leaving for
3 business and I noticed that there were workers over
4 there and there was some nailing going on.

5 Q. Okay. And do you recall exactly what
6 was going on, or just something going on?

7 A. Ah, I don't remember what was going on.

8 Q. Okay. And before Friday the 23rd had
9 you noticed any such noise or working at the site?

10 A. No, not at all.

11 Q. Okay. So you testified that you were
12 using the Sunday the 25th as the bench mark because
13 you went to where, Georgia?

14 A. Yes.

15 Q. How long did you go to Georgia for?

16 A. I got back Wednesday night the 28th.

17 Q. And did you go down this with your
18 wife?

19 A. I was on business.

20 Q. Okay. So you went alone?

21 A. Yes.

22 Q. Okay. And what time on the 28th did
23 you come back?

24 A. I got back the plain was delayed, I got back
25 around six or seven okay. It snowed that day.

0040

1 Q. So you got home six or seven?

2 A. Yes.

3 Q. And that was Wednesday the 28th?

4 A. That's correct.

5 Q. And on the 29th or 30th did you
6 notice any work at the site?

7 A. Yes, I did. All of a sudden when I got back
8 there was a structure there.

9 Q. When you say -- okay, so I want to go
10 through this slow so the board has an exact

11 understanding of the dates because the dates /PH-R
12 important. You got back late on the 28th?

13 A. Correct.

14 Q. Which was a Wednesday?

15 A. Right.

16 Q. And I'm assuming because it was
17 /TKABG you didn't notice anything at that point?

18 A. No.

19 Q. Okay. And it was snowing?

20 A. Yes, it was.

21 Q. Okay. And on the 29th when you woke
22 up, did you notice, did you look at the house on
23 the 29th and notice anything different?

24 A. Umm, I'm not sure whether it was the 29th or
25 30th but it was either Thursday or Friday that I

0041

1 noticed that the structure had been, you know, gone
2 up.

3 Q. And when you say the structure has
4 gone up describe to the board what you mean?

5 A. All of a sudden there was a third floor.

6 Q. Okay. And can you describe use
7 layman terms, be basic in your description, can you
8 describe at what stage of the construction the
9 third floor was?

10 A. Ah the rafters were up and the plywood was
11 on the sides of the house.

12 Q. Of the Sheathing?

13 A. The sheathing, yeah.

14 Q. Did it have any siding?

15 A. No just the sheathing the my wood boards.

16 Q. Was the was the roof shingles on?

17 A. No.

18 Q. I /TPH-GTS it has dormers. Were the
19 dormers constructed?

20 A. Yes, they were.

21 Q. Okay. And were the windows on?

22 A. No. Think so. I'm relying on a picture
23 from February 1st, but no, I don't believe the
24 windows were in.

25 Q. All I want is your recollection.

0042

1 Okay. So, that Thursday or Friday you noticed when
2 you /SKRUFT described to the poured, /WAPD then and
3 I'm going to, I want you to hone in on any
4 discussions you may have had with Mr. Gorman?

5 A. Okay.

6 Q. Okay. Did you have any discussions
7 with Mr. Gorman after that Thursday or Friday about
8 the /SKRUBGS?

9 A. Mr. Gorman called my wife and.

10 MR. RUBINO: I don't think he should
11 really be telling us what had Mr. Gorman said to
12 your wife the fact is if you had discussions with

13 Mr. Gorman you can tell us you had discussions with
14 Mr. Gorman you shouldn't really be going into too
15 much about what was said and you definitely can't
16 tell us the discussions between third parties.

17 A. Okay. It was ago call to our house. My
18 wife told me that it was Mr. Gorman, we went out
19 back we looked at the property together U and we
20 were just amazed by the, you know, how big and you
21 know, how big it was actually.

22 Q.
23 MR. RUBINO: What date was this?

24 A. That was sat the 31st. /STKPWHRAO by the
25 way, Kevin did you realized at this point in time

0043

1 that the 509, 509 and a half marine place was a
2 two-family house.

3 A. Did I know it?

4 Q. Yes.

5 A. I didn't.

6 Q. Okay.

7 A. I would assume that it was but I didn't see
8 anything that would technically you know said it.

9 Q. Okay. So you and Mr. Gorman had
10 discussions. Did he indicate at that point to you
11 that he was going to file an appeal?

12 A. Oh, yes, he did. He was pretty aggravated
13 and he said that he was going to appeal this. So,
14 he told me he was going to write a letter which he
15 did. And after that I had seen him earlier in the
16 week, he told me he wrote the letter of appeal and
17 he said you better get down to look at the plans,
18 it looks like they want to put a balcony on,
19 balcony.

20 Q. Put a time frame on that discussion?

21 A. Ah, the discussion with frank.

22 Q. Yeah, with frank where he indicated
23 he was going to file an appeal and look at the
24 ambulance there is a balcony?

25 A. Sat the 31st, right away.

0044

1 Q. Okay. My understanding in talking to
2 you is that a week or so thereafter you a period
3 here before this board in February, correct?

4 A. Correct.

5 Q. And what was the purpose of you
6 attending the board meeting in February?

7 A. To ask how an approval could be given,
8 building permit could be given on a substandard
9 nonconforming use property.

10 Q. Okay and what happened at that
11 meeting?

12 A. Ah, the board told me that they would, there
13 was evidence I might be giving that they said we'll
14 talk to you after the meet /SKP-G let you know how

15 to file the appeal for it.

16 Q. Okay. And?

17 A. They said to come down tomorrow, that it
18 would be \$200 application fee, \$700 escrow and
19 cliff would have the forms.

20 Q. And then what happened?

21 A. I came the next day. The forms weren't
22 ready. And cliff said to me why don't you and
23 /TPRAPB being go in together on this and I said we
24 already /-P decide /THAD we are. So, he said -- I
25 said I don't have a mailbox, but cliff said I'll

0045

1 just drop them off at Frank's house then seeing
2 that you're in together so I said okay. Frank let
3 me know that he got the forms, he dropped them off
4 at my house and then I /STAT /-D the you know
5 writing all the green cards and going to the Asbury
6 Park press to have the notice filed.

7 Q. And what was your understanding in
8 terms of filing the, /WAOEFL call it the formal
9 forms that are filed with the board, which you told
10 me earlier this week that you ten days at least the
11 hearing?

12 A. That's what it said and it said it on the
13 forms, too.

14 Q. So your intent when you filed this
15 /TKOPT had February 25th, 2009, was to file it at
16 least ten days before the March 12th hearing?

17 A. That's correct.

18 Q. Okay. And you realized that Gorman
19 had already the filed the letter of February 3rd?

20 A. Yes.

21 Q. .

22 MR. MIDDLETON: I have no further
23 questions.

24 MR. VELLA:

25 Q. Mr. McGorry, actually, you've

0046

1 previously had the exhibits there was an exhibit?

2 MR. RUBINO: I have sum up here.

3 MR. VELLA: Undated exhibit from
4 Mr. McGorry, undated one.

5 ATTORNEY1: /TUPB dated appeal.

6 MR. RUBINO: Item did you take some
7 exhibits I have OD three, I have the pictures I
8 don't have -- O B one was a letter filed by Mr.
9 Gorman, two was the application by Mr. McGorry.

10 MR. VELLA: There was undated a
11 little piece of paper that Mr. Brautigan testified
12 that was filed.

13 THE CHAIRMAN: I do have a copy of
14 Mr. McGorrys application up here.

15 MR. VELLA: I believe that's what it
16 is.

17 MR. MIDDLETON: I don't believe I
18 kept anything originally.

19 MR. VELLA: Yes, that's it. You
20 thank you.

21 MR. RUBINO: Is that marked in
22 evidence? /EPB /EPB. I rye rye here you go.

23 ATTORNEY1: I'll take that. Thank
24 you.

25 MR. VELLA:

0047

1 Q. Mr. /PHABG /TKPWOER I'm /TKPWO mark
2 this as P-one?

3 MR. RUBINO: Make sure we mark that
4 with tonight's /-P date, just for the record, there
5 was a number of exhibits, objector one through
6 objector 11. At the previous hearing if we're
7 going to remark all exhibits, there was also
8 planning board one through five and the property
9 owner one through five.

10 Q.

11 MR. RUBINO: We're going to remark
12 those because we don't have a record to
13 substantiate it?

14 MR. VELLA: What I marked P-one dated
15 four, two, 09 is it says an application form for
16 variance and notice of appeal. Do you recognize
17 this document.

18 THE WITNESS: No, I don't.

19 /STKPHRO that handwriting on that is
20 that your handwriting.

21 THE WITNESS: Ah, no its not.

22 Q. Okay. Do you know whose handwriting
23 it is?

24 A. No, I don't.

25 Q. Okay. Now, is it fair to say that

0048

1 the first thing this writing you ever filed with
2 the borough of after was the notice of appeal dated
3 February 22nd?

4 A. The first thing that I submitted to the /PWO
5 row of after?

6 Q. Yes.

7 A. Yes.

8 Q. Okay. And I'm going to show you
9 which I'll mark as P-two dated four, two, 09?

10 MR. RUBINO: What is that.

11 MR. VELLA: Notice of hearing to
12 property owners.

13 Q. Do you recognize this document?

14 A. Yes, I do.

15 Q. Is that the it document you provided
16 to the Borough of Avon on February /#25G9, 2009?

17 A. Yes, it is.

18 Q. That the stirs document you submitted

19 to the borough regarding your objection to the
20 /PHABG construction?

21 A. Yes, it is.

22 Q. And is it fair to -- now, you
23 previously testified that you first noticed there
24 was construction on January 23rd, 2009, is that
25 accurate?

0049

1 A. Yes.

2 Q. And is it fair -- could we agree that
3 the first filing you did on February 25th, 2009,
4 was more than 20 days after that?

5 A. It was.

6 MR. MIDDLETON: I object to this it's
7 a legal concludes.

8 MR. RUBINO: I think that's kind of
9 simple.

10 MR. VELLA: Just asking.

11 MR. RUBINO: Just simple empty /ER.

12 MR. MIDDLETON: We'll /-P stip
13 /HRAUFP that the 25th of February is not 20 days
14 after the 23rd of January /#1234-R okay.

15 Q. Now, Mr. McGorry, you testified that
16 you and Mr. Gorman were joining together in an
17 appeal of some sort. When is the first time
18 conversation you had with Mr. Gorman about joining
19 forces on this case?

20 A. Right after we -- we came down and looked at
21 the plans, I talked to Frank about it and right
22 before I told him that I had gone to the planning
23 board meeting and it was going to cost this much
24 money and let's go in together on it. So, we
25 talked about it right after the had planning board

0050

1 meeting.

2 Q. And that was February --

3 A. And then Cliff the next day suggested that
4 we did. And I said well, we have already talked
5 about that, so -- we already planned on it.

6 Q. When you filed your notice of appeal,
7 you paid the \$900, is that accurate?

8 A. Yes.

9 Q. Did you pay with personal check?

10 A. Yes.

11 Q. And did you sign the W-9?

12 A. Yes.

13 Q. In P-two the notice of appeal, it
14 clearly says that the applicant or application is
15 Kevin and Renee McGorry; is that correct?

16 A. Correct.

17 Q. In your notice of appeal and notice
18 to joint property owners did you at all he have
19 identify Mr. Gorman as the applicant or applicant
20 or objector to it?

21 A. In what was that?

22 Q. In the notice of hearing which is
23 marked P-two?

24 MR. MIDDLETON: We'll stipulate he
25 did not, stipulate for the record.

0051

1 MR. VELLA: Okay.

2 Q. And when you paid the fees did you
3 ever in your check note this was for Gorman and
4 McGorry?

5 A. Frank did give me a check right after that
6 for half of it.

7 Q. Okay, what date is that?

8 A. Ah, I don't have it with me. I think frank
9 has it with him.

10 Q. Okay. Now, how did you get the list
11 /*F adjourning property owners?

12 A. From cliff.

13 Q. Did you pay for that?

14 A. It was \$10.

15 Q. Okay. When did you when was the
16 first time you saw an attorney on this case?

17 A. Ah, when we met with Mr. Middleton at
18 Frank's house.

19 Q. What date was that?

20 A. I don't know. I would have to look it up.

21 Q. Was it mid February, late February
22 /UFRPBLGTS either that or early March?

23 Q. Early March did you sign retainer
24 agreement?

25 MR. MIDDLETON: I object.

0052

1 MR. RUBINO: I don't think that's
2 relevant.

3 MR. MIDDLETON: Of I object.

4 Q. I'm just getting to the fact that
5 they allege that they are joining in this case but
6 the the notice somehow is sparse?

7 MR. MIDDLETON: You know.

8 Q. And doesn't indicate that the
9 commissioner is an applicant?

10 MR. MIDDLETON: I'm an officer of the
11 court I have put on the record I respect both of
12 them /TPHAZ good enough as far as I'm concerned and
13 I think I've set the fact pattern as to what
14 happened. Gorman files an appeal on February 3rd,
15 to this date, no one told Gorman this this appeal
16 wasn't sufficient there is no response from the
17 borough this was insufficient.

18 THE WITNESS: I was /-L told on the
19 night of the planning board meeting on
20 February 12th, that that was considered an appeal.
21 In this case.

22 MR. VELLA: Who told you that.

23 THE WITNESS: Umm, I believe it was
24 Mr. /RAOUB bean no and Charlie /RAOPB I, some of
25 the people came /OEF to me and they said this is,
0053

1 this appeal, February 3rd, is considered an initial
2 appeal.

3 Q. Did you talk to planning board
4 members about this application before this hearing?

5 A. Did I talk to --

6 Q. Any of the planning board members at
7 that meeting?

8 A. No.

9 Q. Okay. Now, with respect to your
10 living arrangements, do you work Monday and
11 /TPRAOEUS?

12 A. Ah, yeah, but I'm in sales so I work almost
13 he have day.

14 Q. Okay do you work at home or out of
15 the office?

16 A. Both.

17 Q. Now, during let's take the month of
18 January, January 1st through January 30th do you
19 work on the weekends?

20 A. Sometimes, yes.

21 Q. Do you know if you worked on any of
22 the Saturdays the month of January?

23 A. Ah, not offhand, no.

24 Q. Okay. And is your testimony today
25 that in the first sat of January you did not notice
0054

1 any construction on the /PHABG property is that and
2 fair to say?

3 A. That's correct.

4 Q. Now, you testified that you own a can
5 cottage that abuts the /ROEUS property; is that
6 correct?

7 A. Correct.

8 Q. How far from the property line is
9 your cottage from the /ROERS fence?

10 A. Only a few feet.

11 Q. That rented out?

12 A. Yes.

13 Q. What's the tenant's name?

14 A. Gus wolf.

15 Q. How long has he resided there?

16 A. A couple years.

17 Q. And in the first January 3rd, first
18 sat owe nine, the second through the tenth did you
19 notice any construction on that date?

20 A. No, I did not.

21 Q. At any point did you notice that the
22 fence was removed from the /ROERS property and
23 dumpsters was on there sight?

24 A. No.

25 Q. Even when you looked, went near the
0055

1 sight and looked at it with Mr. Gorman did you
2 notice the dumb cities?

3 A. After I had got back from Georgia I did
4 notice that, yeah.

5 Q. You didn't notice it before?

6 A. No.

7 Q. Does, during Monday regular business
8 hours, nine through five, Monday through Saturday
9 everyone anyone else at the?

10 A. My son, sometimes.

11 Q. And at no point /TKAOUG any month of
12 John before January 23rd, no one ever heard any
13 nails being hammered any building thing thrown into
14 the dumpster?

15 A. No.

16 Q. And how far is your home to the
17 /ROERS home, approximately?

18 A. 50 feet, 75 feet.

19 Q. Now, you testified that you assume it
20 was it was a two-family how many why did you make
21 that assumption?

22 A. Because there were two families living
23 there.

24 Q. Okay. When did you know there was
25 two families living there?

0056

1 A. Ah, from the previous owners, too.

2 Q. Okay. So the previous owners was two
3 familiar you assume it continued?

4 A. Right.

5 Q. Did you ever notice two mailboxes on
6 the /ROERS property?

7 A. Yes.

8 Q. Okay. And how long had you noticed
9 two mailboxes on that side?

10 A. Ah, before they were there, I believe.

11 Q. Okay. Is it fair to say if you
12 walked the McGorrys property you would notice two
13 mailbox /-TS?

14 A. If you walked.

15 Q. Around the property?

16 A. Yeah.

17 Q. Okay. Do you know, tell me if you
18 don't know do they both identify the exact same
19 address or one says 509 marine or one says 509 and
20 a half marine place?

21 A. I don't know.

22 Q. Did you ever /-P notice there was two
23 electrical meters on the building if you recall?

24 A. I think there is three.

25 Q. Okay. I have no further questions.

0057

1 MR. MIDDLETON: Redirect I have a
2 few.

3 Q. Kevin, just to backtrack for a
4 second. You testified during cross that at the
5 February, I guess it was 12th planning board
6 meeting?

7 A. 12th, yes.

8 Q. 12th, I apologize. You were led to
9 believe that the Gorman February 3rd, 2009, letter
10 was an appeal?

11 A. Right.

12 Q. Okay. By the way, do you know the or
13 have you ever had any conversation with the owner
14 of 509 and 509 and a half marine place?

15 A. Yes, I have.

16 Q. I mean did you have have any
17 conversations about any potential construction?

18 A. Relating to this, I had a conversation with
19 Mr. Ray and it was late July, or early August and
20 he came up to me and he said you should be getting
21 a letter and there is going to be, we need to
22 support the structure. We're going to run some
23 supports and just make sure everything is solid and
24 in place. And I said okay, good luck. And he
25 continued on he said I know there has been a lot of
0058

1 noise and I apologize to the ten /TPHEPBTS but
2 we're going to try to recognize that from now on.
3 And that's the last, you know, I heard of it.

4 Q. And that was when, July of 2008?

5 A. Yeah, last summer.

6 Q. Okay. And when he said you're going
7 to get a letter, what did you think that meant?

8 A. I figured there was going to be a variance,
9 you know, issue. Usually if you get a letter it
10 means you're going to be notified for a variance.

11 Q. And do you recall the context of the
12 conversation that you know, you were you walking
13 around the /KWRAORTD just happen to pump into him?

14 A. I was walking only from church and just as I
15 was walking in the, the back driveway, I ran into
16 Mr. Ray.

17 Q. And you had a conversation with him?

18 A. Yes.

19 Q. And was it just about the
20 construction or was it about other things?

21 A. That was pretty much that was it. That was
22 you know, he said I just want to let you know that
23 we need to support the roof and we're going to add
24 some supports for the structure.

25 Q. Okay. I have no further questions?

0059

1 MR. VELLA: I have a quick question.

2 Q. Mr. McGorry at any port of this

3 conversation with Mr. /ROEUR did he ever say that
4 he was applying to the preponderance planning
5 /TKPWOR board for a variance knowledge no he did
6 didn't?

7 Q. Your testimony that this is what
8 /KWROU opinion what a letter meant, is there tone
9 attorney Mr. Vella I should have really cut that
10 off because I don't find that testimony that
11 relevant so I'm going to cut you off?

12 MR. VELLA: I really want it stricken
13 from the record because its knowledge clearly in my
14 opinion /TKPHRAOEU.

15 MR. RUBINO: If you objected I would
16 have, okay but you're being polite and I can it
17 instruct the board rather than strike it from the
18 record we've heard it I don't find it relevant to
19 the issues before the board.

20 MR. VELLA: Then I have no further
21 questions.

22 THE CHAIRMAN: I would open up
23 Mr. McGorry questions from the board at this
24 point.

25 MS. PLACITELLA: Mr. /PHABG just we
0060

1 don't have any paperwork on this just.

2 A VOICE: Keep your voice up.

3 Q. You actually paid the fee?

4 THE CHAIRMAN: Mare /HRAPB does
5 everybody in the board and the witnesses speak very
6 loudly and we're trying to get everything recorded.

7 MS. PLACITELLA: Would you verify for
8 me the date you paid your fee your application fee
9 for your appeal to Mr. Broad began or whoever.

10 THE WITNESS: It was February 25th go
11 ahead.

12 MS. PLACITELLA: February 25th.

13 THE WITNESS: That I dropped all the
14 stuff off and then on of the application form it
15 said that that had to be in ten days before the
16 next meeting.

17 MS. PLACITELLA: And the application
18 form for a variance is not dated /URBGS do you
19 remember was it the same daylight or was it another
20 time when this is was filed out.

21 THE WITNESS: I don't recall this
22 form. I was never given.

23 Q. This is not /-P signed by you?

24 A. Right.

25 Q. But it is your application form for a

0061

1 variance and appeal and I was just wondering if you
2 did that at the same time?

3 MR. MIDDLETON: I think he testified
4 he /-P didn't.

5 THE WITNESS:

6 Q. Doesn't sign it I was just wondering
7 if you are?

8 A. This is the you will first time I sue this
9 form.

10 Q. Never saw this much follow?

11 A. Correct.

12 Q. When you paid your fee were /-P you
13 given receipt your your check was your receipt
14 there was no further paperwork done on this
15 particular day?

16 A. No I just handed everything into the office.

17 Q. The papers that you had done
18 previously to for your appeal?

19 A. Right, correct.

20 Q. We don't have any paperwork at all so
21 that's /AOEUPLT trying to verify whether it was
22 actually was that you did on February 25th /-LGT?

23 A. Okay, right.

24 Q. So you took the cards that you
25 mentioned earlier, and you brought those in and in

0062

1 addition /THO that, you signed, you gave them a
2 check or whatever you paid your \$900?

3 A. Correct, yes.

4 MS. PLACITELLA: Thank you very much.
5 /TOERP attorney just so much I have it clear you
6 did not approximately fill out that form I'm sorry
7 be, you did not fill out the form.

8 A. That's the first time I've seen that form.
9 No I was never given that form to fill out.

10 MR. MIDDLETON: Mr. Place place.

11 THE CHAIRMAN: Your turn.

12 MS. PLACITELLA: I just wanted to
13 mention that you said you didn't fill this out and
14 I can see that the handwriting on the second page
15 /S-F the same as the handwriting on the first page,
16 so if you didn't fill /T-F out you didn't fill it
17 out I was just wondering if that was done the same
18 day if you recall if it as /T-BG done I have no you
19 didn't sign it.

20 MR. VELLA: In all fairness to
21 Mr. McGorry I was /-P only provided the front page
22 if you have the had second page to show him place
23 place second page is something different, Mr.
24 Vella.

25 MR. VELLA: Yeah, I just don't want,

0063

1 he didn't see it and I didn't get a copy of it
2 either.

3 THE CHAIRMAN: It's my understanding
4 the form you're looking being at is the form the
5 zoning commissioner fills out.

6 MR. VELLA: Maybe for the record

7 we'll mark this as P-three with a notation in the
8 record that it was attached to P-one, I presume and
9 given to the board.

10 THE CHAIRMAN: Correct it's our
11 understanding that comes from the zoning /-P
12 official with which we can address that later on I
13 assume he's going to testify.

14 Q.

15 THE CHAIRMAN: Just another thing
16 the board had 50-minute time limit in its notices
17 we're going beyond the 50 minutes so we'll go a
18 little bit longer if you will up move the pace a
19 long we're going to use our discretion when we're
20 going to call it quits on this particular hearing
21 so we can hear other people proceed keep that in
22 mind as you proceed to the other witnesses.

23 THE CHAIRMAN: Before you continue I
24 don't know if there is any other with questions of
25 Mr. /PHABG from the board 11 question particular
0064

1 you. If I have the right day for this.

2 MS. KENNY I believe you testified
3 that on January 29th or 30th was the first time you
4 have noticed the third /-P floor rafters and
5 dormers.

6 THE WITNESS: Correct.

7 MS. KENNY and also that was the first
8 time that much you noticed that the dumpster was
9 there.

10 THE WITNESS: It was that weekend
11 that I noticed it because that's when we actually
12 walked around the property and looked at it. And
13 took a couple pictures.

14 MS. KENNY okay.

15 THE WITNESS: That's the first time I
16 noticed that there was a dumpster there.

17 MS. KENNY would have been on that
18 weekend.

19 THE WITNESS: Yes /EPB.

20 MS. KENNY thank you.

21 THE CHAIRMAN: Any other questions
22 of Mr. McGorry at this time from the board? If
23 not I would ask if there is any questions from the
24 public at any time of Mr. McGorry before he sits
25 down? If not I'll give it back to Mr. Middleton.
0065

1 MR. MIDDLETON: I had like to call
2 Mr. Gorman.

3 THE CHAIRMAN: We're going to take a
4 two-minute time out and adjust the tapes.

5 (Recess is taken.)

6 THE CHAIRMAN: We're going to
7 reconvene.

8 MR. VELLA: Mr. Chairman, I know we

9 were given about hour and a half. It's about 830
10 and I don't know if you want to start Mr. Gorman
11 and probably ask three questions and continue
12 cross, I don't know how much, I'm just giving you,
13 he's probably a little longer than other people I
14 don't know what you want to do with your schedule
15 that's completely up to you.

16 THE CHAIRMAN: Pen /TPHAEL I would
17 like to squeeze him in.

18 MR. MIDDLETON: May take a while
19 there is one issue I want to address with him, one
20 specific issue that deals with you know his
21 February 3rd, 2009, /HRE. And /RAOEUL /HREU, what
22 happened after he file it. Has anybody even
23 officially responded to it I think that's a
24 significant issue procedurally.

25 MR. RUBINO: While we're there,

0066

1 somebody quoted how do you file appeals in the
2 ordinance, Mr. Rooney and I've just been looking at
3 the ordinances real quick where is that in the
4 ordinance? Can somebody --

5 MR. VELLA: What's that.

6 THE CHAIRMAN:

7 MR. RUBINO: How you file an appeal.

8 MR. VELLA: Well, under be article
9 113-47 you under fees for review and hearings they
10 talk about that sets ever application has a fee
11 schedule, which include this type of hearing.

12 MR. MIDDLETON: May I add onto that
13 point because my argument is a little, it depends
14 more on the specific language of the municipal /-P
15 Land Use Act, 40:/KOL 55D-726 which clearly
16 supersedes whatever is in the ordinance clearly
17 allows an applicant to file an appeal by filing a
18 letter with the zoning officer which is what Gorman
19 did. Gorman is yet to receive a response from his
20 February 3rd letter. The definition of applicant
21 in the.

22 MR. RUBINO: Let's not go on too far
23 with that issue. As far as the legalities of that
24 right now I would like to get some evidence in.
25 The letter he sent and whatever he feels there was.

0067

1 Why don't we try and get that on the record before
2 we start.

3 MR. MIDDLETON: Yeah pause to me
4 procedurally it's going to closer most of this up.
5 Mr. Gorman do you want to take a seat to my right.

6 THE WITNESS: Certainly.

7 F R A N K G O R M A N, having been first duly
8 sworn according to law, testifies as follows:

9 MR. MIDDLETON:

10 Q. Mr. Gorman, would you briefly

11 introduce yourself to the board and indicate where
12 you reside?

13 A. Yes, I am Frank Gorman I live at 501 of Sill
14 vein I can't Avenue with my wife of almost 15
15 years. I bought the house December 7th, 1992, I
16 moved in 15 months later after completing some
17 renovation.

18 Q. And where is your house in relation
19 to 509 or 509 and a half Marine place?

20 A. My lot is approximately 50 feet east of that
21 subject property.

22 Q. Frank, I'm going to center on two
23 issues tonight, one is the February 3rd, 2009,
24 letter and then before you do that I want to hone
25 in on really the issue concerning when you first

0068

1 realized this construction at 509 and 509 and a
2 half Marine place as I did with your neighbor,
3 Mr. McGorry. So why don't we hone in on the with
4 the second itchy described as being when you first
5 noticed construction and in your own words, as
6 Mr. McGorry did, can you describe to the board
7 when you first noticed construction at the site?

8 A. Sure. That was approximately 9 A.M. on
9 Saturday the 31st of January.

10 Q. And can you describe to the board
11 what you saw?

12 A. I went out our front door to let our dogs
13 out for the morning and I heard banging and I
14 followed my /AOERGS looking in a southwest /HREU
15 direction and saw what was a roof being sheath /-D
16 on a new third floor of it 509 Sill vein I can't
17 lane. So as soon as I got the dogs back in the
18 house, I went inside and I said to Sharon what the
19 hell is that?

20 Q. Sharon is who?

21 A. Sharon is my wife.

22 Q. Okay.

23 A. And by then, I proceeded to call McGorrys
24 and ask them if they had noticed and they said that
25 they had noticed that a few days prior to we agreed

0069

1 we were each going to have our breakfast and then
2 get-together and talk about it a little bit more.

3 Q. And that was on that Saturday
4 morning?

5 A. That's correct.

6 Q. Saturday morning January 23 first.
7 And as Frank, as Kevin informed me -- excuse me?
8 I'm sorry tone attorney we're just wondering, there
9 was a buzz we're wondering where that came from.
10 That wasn't us?

11 MR. MIDDLETON: Okay.

12 THE WITNESS: It's in the system

13 somewhere I can hear it here, too.

14 MR. MIDDLETON:

15 Q. Okay, in terms of your clarity as of
16 the date, you're clear that it was that Saturday?

17 A. Absolutely certain.

18 Q. Okay?

19 Q. And you then had breakfast and met
20 Mr. McGorry?

21 A. I did.

22 Q. And?

23 A. And we agreed that it was obviously in error
24 and in violation of borough ordinances with which
25 we're familiar because it's a substandard lot I was

0070

1 100 percent it was a two familiar how is because of
2 the evidence of two mailboxes one saying 509 marine
3 place the other saying 509 sill vein I can't Avenue
4 the evidence of two electrical meters on the
5 outside of the structure and two separate entrances
6 and past experience with route I summer tenants in
7 that structure.

8 MR. VELLA: I object to that.

9 MR. RUBINO: I didn't hear you.

10 MR. VELLA: He said rowdy summer
11 residents I object completely irrelevant all this
12 application and tries to portray my clients or
13 tenants improperly /TPHAOEUFRPLGTS.

14 MR. RUBINO: We don't need the rowdy
15 tenants.

16 MR. MIDDLETON: Well move on.

17 Q. Assuming that you both realized you
18 feel hadn't received any type of letters requesting
19 planning board hearing?

20 A. Right. We discussed that I said I didn't
21 get any notice from an application to the planning
22 poured and Kevin and religion said they had not
23 received one either.

24 Q. Okay. What did you do after that
25 date in connection with this proceeding?

0071

1 A. What I did was I decided to be none
2 confrontational about it with construction workers
3 working there and I called borough administrator
4 and asked if he knew anything about did he said he
5 did not and he would look into it on, you know,
6 when business opened on Monday morning. On Sunday
7 morning after I went to mass I grabbed my digital
8 camera which is with me tonight and I went around
9 and shot a lot of photographs which are dated the
10 first of February. I got them to document what was
11 going on because I thought that was appropriate
12 action to take. On later that afternoon, I took
13 those photographs and I sent them to the borough
14 office in an e-mail requesting that it be

15 investigated. I was advised when business opened
16 on the second of February, by the borough office
17 that that was insufficient /KP-F the proper
18 procedure was to write a letter to Mr. Cliff
19 Brautigan who is the zoning official objecting to
20 it. Which I did do when I got home from work on
21 February the third. And dropped that letter by the
22 borough office on my way to work on February 4th.

23 Q. I would like to hand you a copy of of
24 what purports to be that letter?

25 A. This is the letter, sir.

0072

1 Q. Okay. That's the letter that you
2 wrote on the third of February, 2009?

3 A. That's correct.

4 Q. You wrote it to Mr. Brautigan?

5 A. I did.

6 Q. And you indicate that you are filing
7 an appeal appealing the issuance of a zoning
8 ordinance correct?

9 A. The /TEFBGT of the letter says building
10 permit but I suppose that's synonymous in this
11 case.

12 Q. Okay and you indicated that you
13 thought that the lot was substandard?

14 A. I was well aware it was substandard and I
15 verified same by going on the Monmouth County tax
16 website which shows that its 50 by 40 lot and from
17 knowledge of town I know that 7,000 square feet is
18 the minimum for a standard size lot in town.

19 Q. I would like to have this letter
20 marked Mr. Rough?

21 MR. RUBINO: That's fine.

22 MR. MIDDLETON: What should I mark
23 it.

24 MR. RUBINO: This is your first
25 exhibit so mark that object to one with tonight's

0073

1 date chiropractor can I see that he.

2 MR. RUBINO: Please be sure you put
3 /-P tonight's date on it. 69 Document 4, two, 09
4 R-one.

5 Q. Mr. Gorman, did you hand deliver that
6 letter to borough hall?

7 A. I did.

8 Q. And who did you give it to knowledge
9 I put it in the mailbox for Mr. Rooney.

10 Q. And at any point since February 3rd,
11 2009, did Mr. Broad began contact you indicating
12 that this letter was in?

13 A. No, he has not.

14 Q. Has any bore official indicate
15 contacted you that this letter was in tough?

16 A. No they have not.

17 Q. Did any bore official be contact you
18 that you had a to submit a filing fee with respect
19 to this objection?

20 A. Well, what happened was on the 5th of
21 February, I was advised by the pour office that no
22 action could be taken on my letter. I was verbally
23 advised when I called to ask for a status report.
24 No action could be taken until cliff returned from
25 vacation. And he wouldn't be back in the office

0074

1 until the 13th of February. In subsequent
2 conversations with my neighbor Kevin /PHABG, we
3 were both upset at the lack of action and continued
4 construction, so he decided to come up here on the
5 12th of February to the planning poured meeting and
6 make an /KWEUR I didn't in person he gave testimony
7 /THO that fact already. On the 13th of February,
8 at the direction of Mr. Rubino after the 12th
9 meeting, Kevin /-P went to the office to pick up.

10 MR. VELLA: Objection. We're going
11 to get to.

12 MR. MIDDLETON: No, I want you to
13 focus specifically on your letter.

14 THE WITNESS: Okay.

15 Q. As far as I understand, as of of
16 today's date, you have not been contacted
17 officially or unofficially by anyone in the borough
18 indicating that this letter was /UPB sufficient as
19 a form of appeal?

20 A. That is absolutely correct no one respond
21 today that letter to me about it being
22 insufficient.

23 R. ATTORNEY: Do you have the
24 picture?

25 MR. RUBINO: There is be pictures.

0075

1 MR. VELLA: They are up there, yours
2 are up there.

3 MR. RUBINO: These are objectors
4 pictures.

5 THE CHAIRMAN: At this point we're
6 going to carry this case over to next month no
7 further notices we'll continue with Mr. Gorman
8 man's testimony.

9 MR. MIDDLETON: What's the date of
10 the mate /-G.

11 THE CHAIRMAN: Second Thursday of
12 the month I'm not sure of the actual date.

13 MR. MIDDLETON: Thank you.

14 MR. VELLA: Mr. Chairman, I will be
15 very short. As the chairman is aware because he's
16 the one who signed I have subpoenaed two borough
17 official to testify in this case. It's my
18 understanding that they were contacted by

19 somebody.,
20 MR. RUBINO: Mr. Cook here.
21 MR. VELLA: I want to confirm.
22 MR. RUBINO: He's the township
23 attorney and he indicated to me that he would have
24 been available tonight.
25 MR. VELLA: I understand that
0076

1 attorney tone because we had Tom /STAT all over
2 again I asked if he with /KOE wouldn't have them
3 come in May.

4 MR. VELLA: I want to conversation if
5 I am I understand that I have no problem with that
6 I want to make sure they are aware the subpoena
7 will carry over until the next meeting.

8 A VOICE: Number one they weren't
9 /SH-PD and I discussed it and I advised you that it
10 would thought be necessary for you to subpoena
11 them.

12 MR. VELLA: That is absolutely
13 correct. I had subpoena and he said sent it to
14 them that is subpoena attorney /-P /SKWREPBLD him.

15 MR. VELLA: Voice /SROEUTS they were
16 both prepared to be here tonight. After speaking
17 to Mr. Rub bean no this afternoon knowing that this
18 meeting would be cut short and the length would be
19 starting over it was agreed that they would not
20 appear /-P tonight they will appear at the next
21 meeting and you were so advised of that this
22 afternoon.

23 MR. VELLA: That's fine I want to
24 make sure they will be available.

25 MR. RUBINO: Berry represents this
0077

1 /AOEPL be here I'll take it word for it.

2 MR. VELLA: My too.

3 MR. RUBINO: You know should know we
4 does discuss taking them out of order.

5 MR. VELLA: I have no problem with
6 that.

7 THE CHAIRMAN:

8 MR. RUBINO: Mr. Middleton you should
9 know that too we does discuss taking them out of
10 order, okay.

11 MR. VELLA: Yeah, I agree with that
12 and have absolutely no problem so it's the 14th of
13 May?

14 MR. RUBINO: Yes, is that the date
15 does somebody have a calendar earn earn yes.

16 MR. RUBINO: There will be no further
17 had notice.

18 MR. VELLA: Thank you.

19 THE CHAIRMAN: Motion to carry it
20 next month>.

21 MR./PHABG /PHABG /PHABG you motion.

22 MR. RYAN: Second it.

23 MR. VELLA: Have a good holiday

24 everybody.

25 MR. RUBINO: Before we go let's not

0078

1 use the evidence, let Roberta a /SEFPL /PWA it.

2 MR. MIDDLETON: Mike, I gave you a
3 R-one.

4 MR. VELLA: I'm the one that's
5 holding the evidence.

6 MR. RUBINO: Must have one, two,
7 three.

8 MR. VELLA: I have /-P 12 /#1K3 three
9 and /HAOEUFPL handling it to her.

10 MR. RUBINO: /HR-T the record note the
11 attorneys are divesting themselves of control.

12 THE CHAIRMAN: We've of got to take
13 a vote. And then we'll take a couple minute break
14 before the next hearing.

15 MR. RUBINO: Roberta. Before we take
16 a vote gentlemen before you leave both of you are
17 the offer that is an issue in my mind, so if you
18 want to file memorandum on it be perfectly welcome
19 to do it.

20 MR. MIDDLETON: Which aspect, mike?

21 MR. VELLA: The municipal estoppel
22 issue.

23 MR. RUBINO: The estoppel issue as
24 it's related to the 20-day issue.

25 MR. MIDDLETON: Okay.

0079

1 MR. VELLA: Okay U.

2 MR. MIDDLETON: Okay.

3 MR. RUBINO: Also somebody wants to
4 address this particular issue as one person filing
5 a letter, another person filing the, you know if
6 you want to give me something in writing on that,
7 too we'll we will come that, too.

8 MR. MIDDLETON: My position I want to
9 make this clear right now.

10 MR. RUBINO: Do you want to put it in
11 writing ten days a head of time.

12 MR. MIDDLETON: Okay attorney tone
13 there is two issues, okay.

14 MR. MIDDLETON: Mike I want to make
15 it clear, I don't think -- my issue is not with
16 McGrorry and Gorman filing its Gorman has filed
17 pursuant to the statute and has yet to be directed
18 by anybody in this municipality.

19 MR. RUBINO: That's /WHAG /HAOEUPL
20 saying you want to file memo on it.

21 MR. MIDDLETON: Thank you.

22 MR. RUBINO: Try to have them each ten

23 days ahead of time.

24 THE CHAIRMAN: Vote.

25 Secretary secretary yes, Mr. Davey.

0080

1 Dave Dave yes.

2 MR. ERNST: Yes,.

3 MS. KENNY yes.

4 MR. McGOVERN: Yes.

5 MS. McLAUGHLIN: Yes.

6 MS. PLACITELLA: Yes.

7 MR. RYAN: Yes.

8 THE CHAIRMAN: Yes. So carried next

9 month we'll take a couple minute with break and

10 we'll hear the Kinney. Do you have want to proceed

11 to set up.

12 (Recess is takne.)

13

New application.

14 THE CHAIRMAN: It the last
15 application is Kinney, 27 Pool Avenue. You may
16 identify yourself.

17 MS. KOWALSKI: Thank you, Monica
18 Kowalsky, law offices 509 bay /-FPL street, Avon on
19 behalf of Mr. and Mrs. Kinney.

20 A VOICE: Allison Coffin, a planner.

21 A VOICE: Charles certify Monday,
22 surveyor and engineer.

23 A VOICE: Ed Starke, the architect.

24 MR. RUBINO: Why dough we have all
25 your proposed witness as long with Mr. Rooney raise

0081

1 your right hand and identify yourselves for the
2 record as we say aye, start left and right here he
3 had star Charles certify Monday, Allison Coffin,
4 Charles Rooney.

5 MR. RUBINO: Do you also promise to
6 tell the truthful and nothing but the truth so help
7 you got.

8 A VOICE: I do.

9 MR. BRAUTIGAN: Would you repeat your
10 names for me again.

11 MR. STARKE: S T A R /KEUFPLT I.

12 MR. SURMONT: Charles S U R /-FPL M O
13 N T.

14 MS. COFFIN: Allison Coffin, CO F F I
15 N like the box.

16 MS. KOWALSKI: Monica Kowalski, K O W
17 A L S K I.

18 MR. BRAUTIGAN: Thank you very much.

19 MR. RUBINO: Just for the record
20 Mr. Brautigan the jurisdictional packet appears to
21 be in order so the board has jurisdiction to
22 proceed on the matter.

23 MS. KOWALSKI: Thank you very much
24 Mr. Rubino.

25 MR. RUBINO: If you want I have plans

0082

1 done by E W S architects, Edward Starke architect,
2 this one is dated, 9-1-08, I don't know if there is
3 any revision dates we can mark that into evidence
4 as applicant's one with tonight's date. A that an
5 accurate one.

6 MR. STARKE: Yes.

7 MS. KOWALSKY: Yes.

8 THE CHAIRMAN:

9 MR. RUBINO: Do you have any other
10 evidence you want to --

11 MS. KOWALSKY: I submitted amended
12 plot plans for Mr. Surmont to Mr. Brautigan
13 sometime ago.

14 MR. RUBINO: That part of the --
15 /KWRARBGS he okay, I have that.

16 MS. KOWALSKY: It was revised as of
17 December 11th.

18 MR. RUBINO: I have that. We'll mark
19 this as applicant two. Just for the record, there
20 is revised plot plan by Mr. Surmont as P and P L S
21 for lot six, block 3301 I last you have utilized
22 12, 11, '08 we'll mark that in as applicant two.

23 MR. RUBINO: Anything else?

24 MS. KOWALSKI: Mr. Rubino, I'm just
25 going to assume for purposes record that the

0083

1 application that I submitted it has been given to
2 all the board members and therefore it's not
3 necessary to mark it into evidence as evidence.

4 MR. RUBINO: Correct unless you want
5 we'll mark it into evidence.

6 MS. KOWALSKI: No that's fine I
7 wanted to make sure.

8 MR. RUBINO: Okay.

9 MS. KOWALSKI: That everybody is on
10 the same page. /WEFPL, ladies and gentlemen, my
11 name is Monica Kowalski, attorney on behalf of the
12 applicant Mr. and Mrs. Kinney. And given the prior
13 application, I would like you to do a neck roll, if
14 you don't mind and put that out of your mind. This
15 in essence is an application for a use variance.
16 We were very up front with about this we submitted
17 our plans in our actual application to
18 Mr. Brautigan with the original set of plans we did
19 disclose obviously this was a preexisting
20 nonconforming had gone use with a two-family
21 however our reasons for expansion are /SKPHA
22 different they are medically based. At this point,
23 however, I'm going to hand the microphone over to
24 Mr. Surmont who is our engineer I want Mr. Surmont

25 to give you very detailed description of the site
0084

1 itself and what the relate /HREUTS and hardships
2 are in dealing with this lot /-P.

3 MR. RUBINO: Just before you get
4 started well testimony, we would like to be note
5 that this is a use variance, the may or has already
6 stepped down and Mr. McGovern has stepped down, the
7 commissioner, so there is, they are not sitting the
8 record should note that and we do how many members,
9 one, two, three, four, five, six, seven, eight, if
10 we get done to want there will be seven members
11 voting because it was arrest use variance you need
12 five if I remember if I have votes.

13 MS. KOWALSKI: I understand.

14 MR. RUBINO: Okay.

15 MR. SURMONT: I take everybody has
16 has, everybody can refer to the site plan I've of
17 provided to the poured. I just want to quickly
18 just go over the /SRAOEUT itself. As you know, on
19 pool Avenue the property does have 100, almost
20 115 feet of frontage a long pool Avenue, but its
21 depth is rather limited. Just upped 19 feet is the
22 depth on the right side and just over 75 feet is
23 the depth of the lot on the left side of the west
24 side. Presently there is a two story dwelling on
25 the site that covers about 27 percent of the site.

0085

1 It has but a two and a half foot /-P front yard
2 setback a long pool Avenue. And a 5.7-foot rear
3 yard setback to the north. The minimum lot area in
4 the residential zone for Avon is 7,000 square feet.
5 This lot has just under 4700 square feet,
6 4,698 square feet. So, that's exiting variance
7 condition that obviously we obviously seek that
8 variance as an existing condition because we don't
9 have the opportunity to provide additional
10 property. We do meet minimum lot width requirement
11 of 50 feet. As to the front yard setback to the
12 addition we propose, we're proposing addition of
13 let me get my square footage right about 750 square
14 feet.

15 THE WITNESS: Yes.

16 MR. SURMONT: Approximately
17 750 square feet to the west side of the existing
18 building that will increase our building
19 /KOEUFRPBLG to had 47 point -- 42.7 percent which
20 does exceed the maximum permitted of 35 percent.
21 As to the front yard /-P setback related to that
22 addition, I'll get into that in a minute because
23 there is had some information on my plan and I've
24 had some supplemental information I might clarify
25 that a little bit. As to the side yard setback of

0086

1 the structure, we do, at the time we -- I wasn't
2 aware that the lot sight yard setback was ten
3 percent of the lot width which requires I believe
4 Mr. Rooney points out 11.5, 11 point.

5 MR. RUBINO: We should certify certify
6 11.5 feet attorney top I'm going to mark
7 Mr. Rooney's report January 15th, 2009, as T
8 /TKUFPLT one. So if you can refer to it certify
9 certify yes, I would because Mr. Rooney does point
10 out under the ordinance we do require an 11.5-foot
11 side yard setback. We do slightly violate that
12 /TH-T rear of the proposed addition. There is a
13 about an eight-foot segment of the rear of the
14 proposed addition does encroach on that side yard
15 setback proposing eight-inch encroachment into
16 that.

17 MS. KOWALSKI: Eight inches for eight
18 feet.

19 THE WITNESS: Eight inches for eight
20 feet, yes. The building does setback and have a
21 set back in excess of minimum requirement.

22 MR. RUBINO: So you need 11.46 and /-P
23 you're proposing 10.8; is that correct.

24 THE WITNESS: That's correct.

25 MS. KOWALSKI: For eight feet of the
0087

1 particular addition it encroaches is for eight
2 inches.

3 MR. SURMONT: Rear yard setback
4 25 feet is required in the sewn and obviously as I
5 discussed the limitation, we are very, you know,
6 obviously our depth is severe limitation. We have
7 an existing rear yard setback 5.7 feet on the back
8 right corner of the building and six-foot on the
9 pack left corner of the existing building. We're
10 proposing to just maintain that rear yard setback
11 for the addition to maintain that six-foot setback
12 so it again that's existing variance condition that
13 we are extending bio about 18 and a half feet along
14 that same /# foot setback.

15 There is some information on my /-P
16 plan as to average front /KWRART setback. When I
17 prepared this I, there is five lots that we used
18 other than our own and based on those, we surveyed
19 the front of those lots and it's right above my
20 graphic scale you'll see five lots-and averages
21 ought to 15 feet check check. I've since looked at
22 that a little closer and I do have a supplemental
23 drawing if I could perhaps offer to the board,
24 there is a garage on the adjacent lot ten, that I
25 didn't factor into that an /THAFL /SEUS, what I do
0088

1 /SPWRER duce that into the analysis, the average
2 front yard setback becomes 14 feet. I'm not sure

3 if the ordinance permits it but if we were to go
4 one step be further and introduce the setback for
5 the subject property of two and a half feet, that
6 would bring the average front yard setback down to
7 12.4 feet. But I think for the purposes of this,
8 you know, we can exclude our lot but the 15 feet
9 that I'm showing on the, my plan, legal /SHREU
10 should be superseded by the supplemental plan
11 brings the average into 14 feet. So, if the board
12 in seeing this document were to accept the 14 feet,
13 then the addition we proposed both the building and
14 the front porch would meet the ordinance
15 requirement of /-P minimum front yard setback but
16 again I brought an exhibit, I have enough for the
17 poured if Mr. Rubino.

18 MR. RUBINO: If you want to mark it
19 well let Mr. Rooney take a look at it.

20 MS. KOWALSKI: Thank you we'll mark
21 it has number three, supplemental.

22 MR. RUBINO: Yes. Certain certify
23 what it is, it's a parcel survey of the north side
24 of pool Avenue from Main Street all the way to the
25 other than terminus of pool Avenue and it shows the
0089

1 survey location to the front of all the structures
2 a long pool Avenue and their representative
3 setback.

4 MS. KOWALSKI: Mr. Rubino, may I?

5 MR. RUBINO: Bring it up to Mr.
6 Rooney.

7 /SEB /SEB /SEB had how did I do?
8 We're okay I /UT just wanted to point out again,
9 lot ten is the shows the garage which I didn't
10 initially include into the analysis. So that's
11 where the discrepancy between an average of 15 and
12 /AFPBLG of 14 comes this including that garage as
13 the schedule to the right of that plan indicates
14 the average is 14 feet. And I just want to have
15 further /-P point out that really just the property
16 to the left lot five how is number 23 pool is the
17 only other house on the block that from an
18 architectural perspective really front on pool
19 Avenue those four lots to the east of us lots ten,
20 1112 and 13, all front, arc tech. /WAEL all front
21 on Jefferson but we're showing those setbacks I
22 guess technically as front /KWRARTD setback.

23 THE CHAIRMAN: Just something to
24 point out on our I don't measurements looks hike
25 two measurements porches you've /-P included as
0090

1 front yard setback.

2 MR. SURMONT: Yeah, I can quickly
3 adjust that average if the ordinance Mr. Rooney can
4 straight me out as to whether or not its be

5 measured to covered pour or to the actually front.

6 MR. ROONEY: Its to the face of the
7 residence the porch is not included.

8 THE WITNESS:

9 MR. SURMONT: If that were the case
10 within a couple of tents, the average of 14 feet
11 would become, if you give me one second, then it
12 would -- looking at lot 11 and using the house
13 setback and looking at lot five and using the house
14 setback there, then the average would be slightly
15 greater than 15. And again, if that's the case,
16 then we're not seeking that for our structure, our
17 structure is proposed at 18 and a half, but our
18 pour is at 14, seven, I'm not sure if that's a
19 variance condition, but the average would then be
20 about 15.

21 MS. KOWALSKI: So our structure is
22 setback becomes an issue whether or not the patio
23 porch is an issue.

24 MR. RUBINO: Got to keep your voice
25 up.

0091

1 MS. KOWALSKI: I'm sorry the
2 structure is not an issue with regard to the front
3 yard setback variance it would determine whether or
4 not the pour issue would then become -- a variance.

5 MR. RUBINO: Give Mr. Rooney a minute
6 just to look at it.

7 MS. KOWALSKI: Absolutely.
8 Obviously given response to Mr. Rooney report
9 specifically paragraph /-P 1.6.

10 MR. ROONEY: I believe based on your
11 measurements, the average front yard setback is
12 15.55 feet.

13 MR. SURMONT: Okay. And if the
14 ordinance is just related to structure we do
15 propose 18 /POPBT five to the main house so I guess
16 I can -- we can say that the front yard /SEFT back
17 would not be required?

18 MR. ROONEY: For your proposed
19 addition it would not be required.

20 MS. KOWALSKI: Thank you Mr. Rooney.

21 MR. SURMONT: Now let me just if I
22 could summarize the variance we're seeking and
23 again, obviously the lot area being deficient, the
24 minimum side yard not being met at the back left
25 /KWAEU /TER again, I spoke about the eight-inch

0092

1 encroachment for about eight feet, minimum rear
2 yard /SEFT back which is no greater than what
3 currently exists. Ah, a building coverage I noted
4 we seek 42.7 percent building coverage where
5 35 percent maximum is permitted and impervious
6 coverage which I didn't cover yet we seek a

7 variance for I am per vicious coverage as well we
8 seek to cover 59.6 percent of the property where
9 ordinance requires maximum of 50 percent. There
10 was a bit of a question in Mr. Rooney's report
11 regarding a building height and I'll let Mr. Starke
12 take it a little bit further, but we've spoken
13 about the height of the building relative to the
14 center of the road and we both coordinated
15 ourselves to be sure that the structure will not
16 exceed 35 feet in height as measured relative to
17 the center of the road. There is a architectural
18 element to his /STKAOEUP deterrent for a very small
19 area will exceed the 35 feet but falls within the
20 allowance is that the ordinance provides. So, we
21 are not seeking a height variance.

22 MS. KOWALSKI: Because it's your
23 testimony you don't believe it's necessary.

24 MR. SURMONT: No, it's not.

25 MR. RUBINO: Wait a second let /PHAO
0093

1 Mr. Rooney address that issue.

2 MR. ROONEY: I have no the plan
3 submitted references height from adjacent great.

4 MR. SURMONT: Yes.

5 MR. ROONEY: Did you correlate
6 adjacent grade to the crown of the road?

7 MR. SURMONT: YOU mean Mr. Starke's
8 plan I believe gives the impression it was measured
9 relative to adjacent grade.

10 MR. ROONEY: Codes requires to be
11 measured from the crown of the road if we can
12 correlate /-P crown of the road to adjacent grade
13 we can correlate whether you make 35 feet or not.

14 MR. SURMONT: Yes and we have done
15 that.

16 Stork stork yes, actually if you look
17 at eight, four. Back on the right corner there is
18 a note marking of a 6.98.

19 MR. RUBINO: You have to keep your
20 voice up we can't hear too well.

21 THE WITNESS: A four elevation which
22 is the first daughter that was done bottom right
23 /KORPB he of the he will /SRAOEUGS there is
24 elevation /PHABG /-G of 6.98.

25 MR. RUBINO: I see that.

0094

1 /STARBG /THARBG that's relevant to
2 /KROEPB floor elevation of the garage. If you
3 then, although be it's not indicated, you scale
4 down approximately three feet to mile /TKWRAEUD
5 line which then correlates to the curve elevation
6 that has been showing approximately at 4.3. If you
7 subtract the three feet then its 3.98 from that
8 grade elevation, if you then on my drawing scale up

9 you go up to the 35-foot marking which is here on
10 the page and that's relevant to the code. And
11 that's what the cross projected cross where the
12 eight-inch /TUR /-P rent is.

13 MR. ROONEY: 4.3 is top of curb.

14 MR. SURMONT: Actually gutter grade
15 although I don't show it on the plan pool Avenue
16 has no cross section maybe a tent here at the.

17 Q. Of the road but there is plenty of
18 room in Mr. /STARBGS between Mr. Starke roof height
19 and that 35-foot maximum. /STARBG stack my
20 proposed elevation is about 34-foot but we're
21 familiar with Avon and having survey done during
22 the construction phase so the addition as it was
23 designed maintaining below the 35-foot.

24 MR. ROONEY: You said the ridge.

25 MR. STARKE: Ridge of the addition is

0095

1 going is one foot approximately below the 35-foot
2 requirement from the crown of the road.

3 MR. ROONEY: And then the /TER /RET
4 is.

5 MR. STARKE: 18 inches above 35 feet.

6 MS. KOWALSKI: Which we will be
7 discussing during you're arc technical /ST-PL had
8 part of the allowable under the ordinance within
9 its limitations.

10 MR. ROONEY: Well, I would /-G
11 suggest if the board can look at A four, that's the
12 architectural rendering of the building. And you
13 know, you need to look at the turret and see the
14 extent of it and the degree to which it will be
15 above 35 feet. There is relief in our code with
16 regard to architectural treatments to exceed
17 35 feet.

18 MR. ROONEY: Its section 11-28
19 capital C of our code. It does allow in all zones
20 sky lots, flyer had cupolas, flag poles chimneys or
21 similar structures maybe irrelevant of the height
22 will limit prescribed by this statute but in no
23 case had no more than 15 percent more than maximum
24 many height permitted for use in the district.

25 MR. RUBINO: So this turret would

0096

1 comply.

2 MR. ROONEY: It would. I believe it
3 would. 15 percent at 35 feet would be an
4 additional five, over five feet. And the testimony
5 is it's going to be 18 inches above the 35-foot?

6 MS. KOWALSKI: That's correct.

7 MR. RUBINO: If the board proves this,
8 the /TER rot would be no more than 18 inches above
9 the five feet so that's -- rye rye just to clarify
10 measurement is from the /KROEPB of the home to the

11 front of this road.

12 /SEB /SEB yes. I.

13 MR. RYAN: Nothing to do with

14 adjacent properties.

15 THE WITNESS: No /KROEPB of the of

16 road.

17 Q. As much as I've driven does it tend

18 to dip to where the home is in connection?

19 A. The cross section.

20 Q. No of the street itself from plain

21 street to Jefferson?

22 A. The street itself, you know its.

23 Q. I think it does?

24 A. Street itself might have two scents of fall

25 toward Jefferson away from Main Street.

0097

1 Q. Okay. Check check that was rye

2 /KWRAPB earn earn what was the 61?

3 A. That was the grade adjacent that's actual

4 finished floor 6.98 is that what you're /R-FG to.

5 MR. ERNST: Yes.

6 MR. SURMONT: That's the existing

7 finished floor of the existing building which will

8 also be the finished floor.

9 MR. ERNST: All right.

10 MR. SURMONT: There were a couple

11 /AOB things Mr. Rooney pointed out in his report

12 that I wanted to address. This property is in a

13 flood zone. The existing finished floor the

14 proposed finished floor could be an elevation just

15 slightly below elevation seven. Flood elevation

16 nine. The ground floor of the addition is, is not

17 proposed as habit believe space. And it will be

18 provided with /TPHRAOT venting in accordance with

19 applicable state and federal requirements. So, but

20 I think technically in order to structure with

21 finished floor below the flood elevation, we need

22 to seek a variance for that. But again, Mr. Starke

23 plans if you want to take a look at his Florida

24 plan indicates nothing more than foyer, some

25 storage and the cap room in the rear for the ground

0098

1 floor.

2 MS. KOWALSKI: Essentially

3 Mr. Surmont you're carrying through with the

4 existing first floor dimension.

5 MR. SURMONT: Yes.

6 MR. ROONEY: So your testimony is the

7 first floor of the existing building as well as the

8 addition is at elevation seven.

9 MR. SURMONT: Yes.

10 MR. ROONEY: Flood elevation is at

11 nine.

12 THE WITNESS: That's correct.

13 Q. Buy you're stating the proposed
14 addition is a foyer?

15 A. Well, its -- my review of the architectural
16 plans, maybe Mr.

17 MR. STARKE:

18 MR. STARKE: If we look at drawing A
19 one the intention is to have a foyer that is at the
20 grade that is workable from the driveway, the
21 existing driveway we're going to come into the
22 foyer and have a set of stairs that are going to be
23 nearly four-foot wide going to the second floor and
24 then the hallway to go to the elevator which is
25 requirement from the health situation and that is
0099

1 basic use of this ground level which is below flood
2 level.

3 MR. ROONEY: Mechanical electrical
4 room and elevator.

5 MR. STARKE: Yes.

6 MR. ROONEY: At seven.

7 /TARBG /STARBG at had seven for the
8 wheelchair, wheelchair access.

9 MS. KOWALSKI: Mr. Surmont is that
10 it with your testimony.

11 MR. RUBINO: We can't give you that
12 relief. I don't think we were just discussing it
13 with Mr. Rooney that's not part of the zoning
14 ordinance.

15 MR. SURMONT: You --

16 MR. ROONEY: It's an ordinance within
17 the borough code.

18 MR. SURMONT: Yes.

19 MR. ROONEY: I think it I reference.

20 MS. KOWALSKI: Development permit
21 from the building inspect for is warranted.

22 THE CHAIRMAN: But its order that in
23 government feel ma regulations any relief from of
24 the FEMA regulations has to go through the building
25 department.

0100

1 MR. SURMONT: Yes I'm just respond to
2 go Mr. Rooney's point in his note that of the
3 applicant will need to seek variance from the board
4 for the proposed first floor elevation.

5 MS. KOWALSKI: We understand there
6 maybe additional applications that need to occur
7 but we still need the variance for the elevation.

8 MR. ROONEY: Well I think I may have
9 mis-spoke in my letter. There is appear variance
10 required but I think its administered through of
11 the construction office. Not before this board.

12 MR. RUBINO: In other words, if it's
13 not part of the zoning code.

14 MR. ROONEY: Section one '0417 /-P of

15 the Borough of Avon.

16 MS. KOWALSKI: Not a variance.

17 MR. RUBINO: Not something.

18 MR. ROONEY: /EUPG I mis-spoke in my
19 report in regard to this board giving a variance.

20 MS. KOWALSKI: Then we'll address
21 that issue to the appropriate department I should
22 say sew it's not a variance requirement for this
23 application.

24 MR. SURMONT: Only other thing /-P I
25 wanted to point out was off street.

0101

1 THE CHAIRMAN: Before you proceed I
2 think any approvals that we would /-P present or
3 grant in this case would have to be conditioned
4 that the first floor was in compliance with all the
5 /-P rules and regulations of the borough and state
6 and federal government and we're not going to grant
7 any relief in that regard you would have to get
8 approval of someone else.

9 THE CHAIRMAN: Only for zoning for
10 relative to our land use and no other regulations
11 and codes.

12 MS. KOWALSKI: Could certainly be
13 condition of approval.

14 THE CHAIRMAN: You may proceed.

15 MR. SURMONT: I wanted to verify the
16 requirement for off street parking. The use of
17 this property requires 4 Off Street Spaces there
18 are two spaces in the garage of the exiting
19 structure. And then there are two spaces proposed.
20 Directly in front of that existing garage which
21 provides the four required. That was requested on
22 Mr. Rooney's 27.23.

23 MR. ROONEY: Where on the site plan
24 is that?

25 MR. SURMONT: Okay. Do you see the
0102

1 element of the house that says one story with
2 balcony on top.

3 MR. ROONEY: Yes.

4 MR. SURMONT: To the left of that
5 over /-P to the new addition is about 17 -- is
6 about 17 feet. There is an area about 17 feet wide
7 by about a minimum of about 19 feet deep at that
8 right side. There is an area called slate and
9 concrete it's the present driveway. A small bit of
10 that present driveway that /KWAEUR /ER of the
11 addition will take up a bit that driveway but we're
12 still left at 17-foot dimension between the
13 existing structure and the proposed structure to
14 get two cars into that driveway.

15 MR. ROONEY: There is two car garage
16 there.

17 MR. SURMONT: Two car garage well.
18 THE CHAIRMAN: Covered porch how
19 does that interfere with the driveway.
20 MR. SURMONT: Does not.
21 THE CHAIRMAN: Just a roof.
22 THE WITNESS: Roof. So I'm sorry its
23 enough depth for that car to get to the garage door
24 underneath that.

25 THE CHAIRMAN: No columns in that
0103
1 area as well.

2 THE WITNESS: No, there is not.
3 THE CHAIRMAN: Floor of the porch
4 should slate and/or concrete the porch physically
5 is either slate or concrete that grade not
6 necessarily a raised porch? Where it says proposed
7 covered porch, there is a roof there obviously
8 columns.

9 THE WITNESS: Yes.
10 THE CHAIRMAN: What is the material
11 of that porch.
12 THE WITNESS: That proposed porch.
13 MR. STARKE: Its wood.
14 THE CHAIRMAN: Wood at grade.
15 THE WITNESS: No concrete existing
16 concrete.

17 MR. SURMONT: Concrete at the ground,
18 wood porch.
19 THE CHAIRMAN: How do you get looks
20 like in the plan that the covered porch goes across
21 the driveway and part of the garage.
22 THE WITNESS: It does.
23 MR. STARKE: On the second floor.
24 THE CHAIRMAN: Oh, second floor /-P
25 only.

0104
1 MR. STARKE: Yes it's actually a
2 bridge that connects the porch on the second floor
3 with the new proposed porch and it's about five
4 feet wide.

5 THE CHAIRMAN: So the first floor of
6 the porch is really the driveway.

7 /SEB /SERB yes, it is there is no
8 first floor porch you're right it's the driveway.

9 THE CHAIRMAN: Talking second floor
10 deck at this point.

11 MS. KOWALSKI: It's hard to distinct
12 because you're talking semantics decks porches it
13 covers if you want to call the physician /TPHRAO a
14 patio /PHAOEUFT make it a little easier to
15 distinguish versus a deck on the second floor.

16 THE CHAIRMAN: Its kind of --
17 MR. STARKE: It's a little more clear
18 on drawing A two.

19 MS. KOWALSKI: We're going to cover
20 that in the architectural testimony so you might
21 want to hold off on that.

22 MS. KOWALSKI: I think Mr. /SHER
23 Monday for purposes of testimony is indicating
24 two-car garage and two parking spaces.

25 MR. SURMONT: Yes, I am. Be.

0105

1 THE CHAIRMAN: What is all the
2 concrete to the east end of the house, appears to
3 be ago big area of concrete.

4 MR. SURMONT: Patio.

5 THE CHAIRMAN: That's existing.

6 MR. SURMONT: All existing, yes. Its
7 proposed to remain.

8 THE CHAIRMAN: Even though we're
9 looking at 59 percent impervious coverage?

10 MR. SURMONT: Yes.

11 THE CHAIRMAN: That concrete comes
12 around the corner of the south of east goes right
13 up to the balcony, look like.

14 MR. SURMONT: It does.

15 MR. RYAN: And it's the rear of the
16 home /-P facing north covering the grass,
17 /TKPROUPBDZ, concrete, rear of the home the north
18 part, the pack of the home.

19 MR. SURMONT: Of feet rear yard in
20 the back.

21 MR. RYAN: Yes.

22 THE WITNESS: That is line.

23 MR. RYAN: All lawn.

24 MS. KOWALSKI: There will be lawn in
25 front obviously too still maintain the lawn area.

0106

1 MR. RYAN: Will you have one air
2 conditioning unit or two in the knew plans.

3 MR. SURMONT: I hadn't considered
4 that quite honest /HEUF /-GS what do you think, he
5 had.

6 MR. STARKE: We'll have to add
7 another air conditioning unit for the aid decision.

8 MR. RYAN: Have you put in /KOFRPLG
9 for the pads for the air conditioning units include
10 your submission of coverage.

11 MR. SURMONT: I haven't. That would
12 -- that would probably add another maybe two-tenths
13 of a percent to the number I provided.

14 THE CHAIRMAN: /PEUPL per /SRUS
15 check check.

16 MR. SURMONT: I don't think I have
17 the brake tone of my coverage calculation. I
18 presume it would be but I don't have my -- I don't
19 have any plan with me to tell me for sure. Usually
20 we count everything other than lawn when we make

21 that coverage calculation. Including the chimney
22 and the wall along the frontage.

23 MR. SURMONT: We are removing a she
24 had in the back of that.

25 MS. PLACITELLA: So out /STEPB
0107

1 /PWHREU the first floor ten /TPH-PBTS unit would
2 remain the same.

3 MS. KOWALSKI: We'll cover that in
4 the architectural testimony, 50 percent.

5 THE CHAIRMAN: That will be covered
6 by the testimony of the engineer Mr. /SERB no at
7 this point. Place place okay.

8 THE CHAIRMAN: If there is no other
9 further questions of the engineer, I am /-P left
10 the applicant proceed to the next expert.

11 MS. KENNY I have one question. I
12 noticed on the average front yard setback if you
13 look at lot five, lot 11, and lot 12, they measure
14 from the corner of the house to the road and in
15 those conditions -- on those lots they are actually
16 going through the add Jay /-P September property as
17 opposed to measuring from --

18 MR. ROONEY: That's okay.

19 MS. KENNY that is okay.

20 MR. ROONEY: That's fine.

21 MS. KENNY: Thank you.

22 MR. TALMAAGE: I have a question.
23 Lot ten, lot 1112 and hot one you have give address
24 on Jefferson Avenue.

25 MR. SURMONT: Yes.

0108

1 MR. TALMAGE: Yet calling using the
2 dimensions as /ABG front yard setback where the
3 legal address is actually on Jefferson Avenue isn't
4 at that a rear yard setback.

5 THE CHAIRMAN: Actually the lot face
6 /H-S two streets actually has two frontage since
7 pool Avenue is stool /HREU a street it would have
8 two frontages little bit of technicality in this
9 area.

10 MS. KOWALSKI: Mr. Surmont testified
11 that only one of the other house is on pool Avenue
12 actually front pool Avenue that the rest /-P were
13 calculated from what looks to be a rear yard.

14 THE CHAIRMAN: That should be
15 considered by the planning board member it's a
16 unique street, not a typical public street.

17 MS. KOWALSKI: Are there any further
18 questions of Mr. /SERB?

19 THE CHAIRMAN: If not, you may
20 proceed to your next expert.

21 MS. KOWALSKI: At this time we're
22 going to have Ms. Coffin testify as to planning.

23 THE CHAIRMAN: Before you proceed
24 let me open it up to the public any questions of
25 the applicants engineer and surveyor at this point?

0109

1 If not we'll proceed to the next expert.

2 MS. KOWALSKI: Thank you. Ms.
3 Coffin you've been asked here this evening to
4 discuss the planning specifications for this
5 particular property there are certain questions
6 that arise as a result of Mr. Rooney's report.
7 Specifically a justification for the use variance.
8 Specifically a justification for the use variance
9 which is requested here. Would you please at this
10 time go through the positive and negative criteria
11 in your request /TPO use variance and special
12 reasons could have could have yes in this
13 application they are proposing to construct a two
14 and a half story addition to primary residents
15 within a two-unit residential building and the
16 purpose of the addition that is proposed is to
17 expend and re work the liveable floor area from the
18 primary unit to accommodate the medical condition
19 of the owner he has pack sons disease.

20 THE CHAIRMAN:

21 MR. RUBINO: Let me interrupt you a
22 second I was talking to the chairman I didn't hear,
23 did you qualify yourself, qualify, Allison.

24 MS. KOWALSKI: I apologize.

25 MR. RUBINO: Did it very quickly.

0110

1 MS. KOWALSKI: I guess she's been so
2 many times.

3 MS. COFFIN: First time I've been
4 here since I have got my license.

5 MS. KOWALSKI: Please be so kind to
6 /SKRAOEUPBD your qualificaitons and appearances
7 before other /-PB boards in the area could have
8 could have licensed professional planner in the
9 State of New Jersey /-LTS certified by the American
10 institute certified planners, James Higgins
11 associates. I have been licensed for about four
12 years now in that time I have testified in front of
13 boards in almost 50 municipalities in New Jersey
14 mostly in Monmouth, Ocean, /PHEBGS counsel tease if
15 you like I can list them all but it will take time.

16 MR. RUBINO: Licensed in the State of
17 New Jersey.

18 THE WITNESS: Yes, I am planning.

19 MR. RUBINO: For about how long?

20 THE WITNESS: Been practicing
21 planning closer to 12, but licensed for four.

22 MR. RUBINO: Graduated you have a /-P
23 degree in planning?

24 THE WITNESS: No I don't have. I

25 have a degree from Boston College.

0111

1 MR. RUBINO: Got licensed through the
2 State?

3 MS. COFFIN: Yes, I did.

4 THE CHAIRMAN:

5 MR. RUBINO: Mr. Chairman.

6 THE CHAIRMAN: Acceptable.

7 MS. KOWALSKI: Would you like me to
8 qualify Mr. Surmont or can we stipulate
9 Mr. Certify?

10 MR. RUBINO: Licensed engineer in the
11 State of New Jersey?

12 MR. SURMONT: Yes, I am. If I could
13 I want to point out I found my sheet of coverage
14 calculations and whoever asked about the shower,
15 shower is included in my calculation, but not the
16 proposed AC pad.

17 MR. RUBINO: For the record Mr.
18 Surmont has been accepted in the past.

19 MS. KOWALSKI: Thank you. We will
20 get them him it do you want to do Mr. Starke.

21 MR. RUBINO: Are you going to have
22 your architect testify further?

23 MS. KOWALSKI: He's going to testify
24 shortly. Let's get Ms. Coffin first.

25 MR. RUBINO: Okay.

0112

1 THE WITNESS:

2 MS. COFFIN: Okay the property is
3 existing under sized irrelevant shaped lot about
4 nine on the north side of pool Avenue and its
5 developed with a two story building that contains
6 two existing residential units the sight is located
7 within the R single family residential /TKWEUBGT
8 and permitted uses in the zone are single family
9 detached dwelling units and public playgrounds
10 parks and public purposes uses. The existing and
11 proposed two-unit residence is not a permitted use
12 in the zone and therefore, a D-two variance for the
13 expansion of a nonconforming use is required.
14 There are a couple of bulk variance conditions on
15 the site that's lot area, the minimum lot area in
16 the zone is 7,000 square feet and the subject side
17 is significantly undersized at 4,00098 square feet.
18 There is also an existing variance for lot depth.
19 Required depth is 100 feet and the existing depth
20 is about 47 feet and there is a front yard setback
21 variance condition with the portion of the building
22 closest to the /PROPTS two and a half where the
23 front yard setback required is 15 and a half but
24 all the and proposed additions located behind the
25 15 and a half foot setback requirement. Are there

0113

1 are a couple knew variances required rear yard
2 setback, side yard setback, is lot coverage and
3 building coverage I'll go onto those in greater
4 detail. It's my opinion that special reasons exist
5 for the /TKPRAPBT /-G of the requested variances
6 granting of the variances will not impair the
7 intent and purpose of the master plan and zoning
8 ordinance nor will it result in substantial
9 detriment to the public health safety it general
10 welfare. To start with, the special reasons
11 existing for /R-T granting of the use variance to
12 expand the preexisting nonconforming use the New
13 Jersey superior court and the /SRER ridge versus
14 the governing the township case January 1990
15 decision examined the criteria that should be
16 considered by boards when considering a D-two
17 variance for the expansion of a preexisting
18 nonconforming use and the Court determined that
19 when special reasons concept is applied to the
20 expansion of a nonconforming use, things such as a
21 appearance, he is /STET /THEUBGS and compatible of
22 the use with the surrounding neighborhood are
23 unique /HREU significant especially if there is no
24 /-PB evidence that the use will be discontinued.
25 In this instance the proposed expansion of the use
0114

1 include redesign of the building which offers
2 substantial benefits in terms of the functioning of
3 the /SAOEUFT, the primary purpose of the expansion
4 is to create a liveable area to accommodate the
5 owner as his illness causes increased disability
6 and the result of the proposed addition include
7 significant improvements to the architectural /-P
8 appearance to the building also the removal of
9 existing nonconforming she had that's located
10 within the side yard and the resulting improvements
11 to the aesthetic impact of the site human resource
12 significant and there is no detriment associated
13 with the proposed use and bulk variances although
14 the applicant requires a D-two variance for the
15 expanding of the nonconforming had gone use there
16 is no actual change in use be proposed. The sight
17 is nonconforming because there is an existing
18 access had been sorry there is apartment two units
19 on the site proposed increase in floor area for the
20 building to the principal dwelling unit does not
21 increase the accessory apartment no does the
22 increase the residential density on the /SAOEULT
23 and though D-two variance is need today expand the
24 building of the magnitude as it relate to the
25 density of residential use on the site does not
0115

1 change in inform way. With regard to the bulk
2 variances there is no dealt ment to the /-P public

3 the side yard setback is de minimus variance it's
4 about that much (indicating) and I know the law is
5 kind of unclear as to what qualifies as de minimus
6 the guideline I use if I can show it with one /-P
7 hand it's definitely de minimus.

8 MS. KOWALSKI: Let the record
9 indicate Ms. Coffin is holding up her hand with
10 thumb and pinkie extended.

11 THE WITNESS: That is just about
12 eight inches of the rear yard set /PWRABG is
13 extension of the existing building line it's the
14 existing rear yard sets back and there is no
15 detriment to expanding that along the length of the
16 proposed addition. Now, the building coverage and
17 I am per views coverage variances are necessary to
18 support the expansion of the building to
19 accommodate the handicapped accessibility of the
20 property. But there is also a degree of hardship
21 in that this sight is substantially undersized on a
22 conforming lot the building coverage would allow a
23 footprint of 2,40050 square feet /WHADZ being
24 proposed is 2005 square feet so it's significant
25 /HREU smaller than the size building that's
0116

1 anticipate /TPH-D this zone. For impervious
2 coverage on a conforming lot you could have
3 3,000500 square feet. /PAZ being proposed is
4 2,800 square feet /SHO again, it's significant
5 /HREU less than what are the zoning would
6 anticipate for a property within the zone and now
7 there is no additional property available to expand
8 the size of the lot and as such /SEURPBS the
9 variance is being driven not by request of
10 unreasonable use of the site but rather by the
11 undersized nature of the property there is a
12 hardship related to that variance. Now approval of
13 the variances would not substantially impair the
14 intent and purpose of the master plan of the zoning
15 ordinance the nonconforming willing use of the
16 sight is preexisting the proposed additional living
17 space to accommodate the medical condition of the
18 owner technically requires D-two variance but there
19 is no real expansion of the non-conformity and that
20 the residential density on the property is not
21 being increased. Accessory apartment is to the
22 /EUP being increased in floor area and the use of
23 the sight for two residential units remains
24 unchanged. It's my opinion that the addition as
25 proposed would not substantially impair the master
0117

1 plan of the zoning ordinance.

2 THE CHAIRMAN: Questions? Let me
3 start off by asking you just stated your opinion
4 was the addition would not go against our master

5 plan but our plaster plan says the maximum building
6 coverage should be 35 percent and impervious should
7 be 50 percent and we're directly exceeding those
8 had numbers how can this be not contrary to be our
9 master plan.

10 THE WITNESS: When you have a
11 variance for lot like this where the lot is
12 substantially under size permanent disability the
13 35 percent and the 50 percent are drawn up
14 considering a 7,000-square foot lot. So, there is
15 no substantial impairment in applying a scaled up
16 or scaled down use of the sight given the sides of
17 the property.

18 THE CHAIRMAN: I would completely
19 disagree with that I was on the committee that put
20 together the mast plan, it's giving us a percentage
21 for a reason otherwise we have have gave it in
22 square feet. I mean the ordinance sets a
23 percentage because some lots are under sized some
24 are oversized so it considers the size of the lot
25 in the determination of how much can you cover

0118

1 building and I am /PRER confuse the 7,000 /KP-F say
2 35 percent of /-FPL 7,000, I mean we're not
3 exceeding that on a, lot that's completely contrary
4 to my understanding of the whole master plan the
5 way that ordinance is put together.

6 THE WITNESS: Well, in this instance
7 what we're looking a at is called C one variance
8 that's the hardship standard and that's appropriate
9 in this situation where there is something unit
10 about the property in this case its size is unique,
11 its shape is certainly unique. And the street it's
12 on is very much unique. So there are unique
13 conditions porch this lot. Applying a different
14 standard, allowing a different standard for a
15 /AOUPB /THAOEBG undersized parcel would not impair
16 the intent and purpose of your mast plan as applied
17 to other /PROPTS throughout the community.

18 THE CHAIRMAN: So now you're saying.

19 THE WITNESS: Its nonconforming
20 obviously requesting a variance doesn't
21 specifically meet that standard.

22 THE CHAIRMAN: I can understands the
23 unique conditions for the shape potentially the
24 street but the size I don't see where that comes
25 in. I do accept /WOUR other conditions. In that

0119

1 regard. /TPH*EU other questions of the at this
2 time?

3 MR. RYAN: On your proposed covered
4 porch on the second floor, what is the, I guess the
5 length from the home out.

6 MS. KOWALSKI: That's going to be

7 more of a architectural question.

8 MR. RYAN: Okay.

9 MS. KOWALSKI: As opposed to
10 planning question.

11 MR. RYAN: No problem.

12 MR. SURMONT: I can answer that along
13 that left side.

14 MR. RYAN: Yeah I would think so.

15 MR. SURMONT: That's 13 feet, he had
16 does that sound --

17 MR. RYAN: From the home out /STOT
18 street.

19 MR. SURMONT: Oh, I'm sorry from the
20 home out to the street.

21 MR. RYAN: Because we're not
22 permitted to have a porch greater than ten feet
23 from the home off the home.

24 MR. SURMONT: Okay.

25 MR. RYAN: I maybe saying it.

0120

1 MS. COFFIN: Saying the depth of the
2 porch from the building can be ten feet or extended
3 to the /-P front /KWRART setback no more than
4 20 feet.

5 MR. SURMONT: That is 13 feet.

6 MR. RYAN: That is 13 feet.

7 MR. SURMONT: Yes.

8 MR. RYAN: That permitted 13-foot
9 porch? Here.

10 MR. ROONEY: The code allows an
11 encroachment into the permitted front yard area up
12 to ten feet.

13 MR. RYAN: /TOUP ten feet, right.

14 MR. ROONEY: So if your building is
15 beyond.

16 MR. RYAN: Then need al natural.

17 MR. ROONEY: Actual you dimension can
18 exceed ten feet as long as the building is setback
19 further than it need be.

20 MR. RYAN: This example would be
21 fine.

22 MR. ROONEY: I believe it would be
23 okay.

24 MR. RYAN: Okay, thank you.

25 MS. KOWALSKI: Are /THR-PB any other

0121

1 questions of Ms. Coffin finish.

2 THE CHAIRMAN: Yes just guest being
3 back to be your testimony again this time in
4 reference to your testimony on the expansion of the
5 use, you made reference that the expansion of the
6 use is not increasing the /STKEPB sit, I guess when
7 you look at from it's still two units I would agree
8 with that but what you're doing is taking

9 nonconforming use and increasing the coverage of
10 that nonconforming use. And in that approach, I
11 mean the point of the mast plan is to have
12 everything be one family in these zones. And if we
13 allowed expansions of two-family volume, isn't that
14 contrary ton our mast plan I mean more bedrooms
15 more space potentially more occupants.

16 MS. COFFIN: I don't think there
17 would be potentially more occupants.

18 MR. STARKE: There is no change
19 excuse me Mrs. Though change in the bedroom /-P
20 count exiting structure is that we are renovate
21 /S-G two bedroom and maintaining two bedroom place
22 place two bedrooms on the /TPHEURS floor and two on
23 the second.

24 A VOICE: Two on the second.

25 MS. KOWALSKI: Once again place

0122

1 place I don't know.

2 MS. KOWALSKI: I understand that
3 just so had members of the public well go through
4 the architectural plans and the structure with
5 regard to the ago tech. /WAL testimony. Place
6 place well may I ask this question of the planner
7 considering the gentleman, the owners medical
8 condition et cetera, and inasmuch as it is an
9 undersized lot, did you ever think about converting
10 it back to a one family home.

11 MS. KOWALSKI: Imagine we're going
12 to bring that he have up definitely on the
13 architectural testimony place place I don't know
14 which goes to which its be confusing here.

15 MS. KOWALSKI: Actually part of and
16 /RAOPB report and we're going to have the architect
17 go through that for you place place okay.

18 MR. RUBINO: I was just going to ask
19 to the chairman is there going to be some testimony
20 from the own /TPHE.

21 MS. KOWALSKI: Unfortunately the
22 owner is is not here, he's out of state tone.

23 MR. RUBINO: Just to lay the
24 foundation as to the issue for the illness.

25 THE CHAIRMAN: As a hardship.

0123

1 MS. KOWALSKI: Well and that's
2 actually why I asked as part of the package that we
3 submitted, Mr. Kenny had been diagnosed with
4 Parkinson's disease we actually have Mrs. Kin knees
5 sister here who could perhaps give us some
6 testimony with regard to the progression but he was
7 unable to be here this evening.

8 THE CHAIRMAN: I'm kind of more
9 entrusted from the planning perspective if I can
10 ask miss question Mr. Could have in is the use of

11 medical question as a hardship land use case.

12 THE WITNESS: I don't use that as the
13 /HARTD ship in this case in this case the hardship
14 is the fact that the property is undersized so so
15 to have a reasonable had floor area /RA less of the
16 owners I health had some relief is necessary.

17 THE CHAIRMAN:

18 MR. RUBINO: I think /TR a legal
19 circumstance I think certain circumstances that
20 /ROEUFD /-D some type of relieve to somebody with a
21 special medical condition could be considered a
22 special reason but I think there thereof would have
23 to be adequate testimony to back that up,.

24 MS. KOWALSKI: We can certainly have
25 a family member testify.

0124

1 THE CHAIRMAN: I also don't though I
2 was involved in a case where we actually brought in
3 a physical therapist /PEUFT, I believe it was to
4 say that the condition was needed. Whatever it was
5 we asked for relief for was needed to help this
6 person with their special needs /#-6789D Mr. /RAOUB
7 no I can /SEPBL appreciate that and I think with
8 once we get.

9 MR. RUBINO: Al son is /OT really
10 bringing that up.

11 MS. KOWALSKI: No and I think really
12 once again that's going to go to the architectural
13 testimony because one we get the architectural
14 testimony you're going to see that you know the
15 rooms are sized for a /SEPBL reason. /-TS doorways
16 are sized for a certain reason the stairs are sized
17 for a certain reason the elevator is requested for
18 a certain reason nobody is sitting here doing an
19 expansion because had you they want to put in other
20 tenants or other occupants this is a very, very
21 specific relief requested because you no, when you
22 look at it in its totality, land use regulations
23 are not to keep a pen out of their home, you know,
24 put it /-G boldly on /EUS face so you know the kin
25 knees are here, the witness /PHRAEUBGS its /UPB

0125

1 /TPHAORT /TPHOEUT they couldn't be here tonight but
2 we he's we can offer some item that certainly the
3 architect can testify as to the modifications being
4 made to the home and why the home could not be
5 converted to a single family residence. So, we
6 would proceed with that.

7 THE CHAIRMAN: If I can just go back
8 to Mr. Could have I don't want to harp on this but
9 the statement that you just made Ms. Coffin was
10 that the hardship is size of the lot and if that's
11 the case and ever undersized lot has a harp ship to
12 expand you I'm trying to under the true hardship

13 there when you by a property /TPHAZ under sized a
14 zone sized for 7,000 and the lot is 4,000 you know
15 that going in and still same /-P land use so where
16 is the hardship.

17 THE WITNESS: Anybody who does by a
18 significantly undersized lot yes could come in and
19 argue that there is a certain degree of hardship in
20 that when we're lacking at what hardship case what
21 we want to see is does something in the ordinance
22 present the reasonable utilization of the property
23 what is the underlying purpose of the ordinance and
24 when you have, you don't have just a 35 percent
25 building coverage you have a 35 percent building
0126

1 coverage that is tied to a 7,000-square foot lot
2 size. So that's saying that we expect our
3 dwellings to be a certain size within the community
4 when you have an undersized lot that can't be
5 expanded can't be built upon to provide the sort of
6 home that's anticipated in the ordinance, there is
7 hardship. And it isn't /SUFT hardship.

8 MR. RUBINO: Mr. Chairman, the way I
9 look at it you can find be hardship in this case
10 but not necessarily agree with the scope of the
11 expansion if this was a vacant lot and somebody
12 wanted to come and develop you could find yes, it
13 is hardship /-P undersized lot and we're going to
14 allow somebody to put a house on it. This is an
15 existing house on it, you can also /-P find
16 hardship but you have the right to look into the
17 size and the scope of the expansion that is
18 approached. So, there is a lost flexibility that
19 the board is given in looking at what's proposed,
20 the size of the lot and what you want to do. I
21 think the cases and the statute give the board
22 freedom, I think it says you may but you don't have
23 to. An easy way to look at it.

24 THE CHAIRMAN: Just in Avon we do
25 have a lot of undersized lots and they are /-P
0127

1 under sized and 35 /PES I think is written to 7,000
2 and square foot /-P lot but also written to
3 4,000 square feet /-P lot we're anticipating areas
4 in town to have smaller lots have smaller homes so
5 you get that density ratio kind of all fits.

6 MS. COFFIN: What's unique in this
7 situation then obviously going to need to be more
8 testimony given as to the why the building is the
9 the size it is that's to accommodate the owner's
10 medical condition.

11 MR. RUBINO: I think that would be
12 important to establish the just /TPAOEUBL reason
13 and can you do, can you add the, make the additions
14 within the 35 percent and the 50 percent of the

15 that the ordinance allows you as opposed to what
16 you're asking for?

17 MS. COFFIN: When we're looking at
18 the C one variance isn't just hardship that's what
19 catchall phrase we tend to use out of habit, but it
20 goes to, there is actually two sides to the C one
21 variance. It goes to whether the I'm trying to
22 find that I've got my copy here. Whether the
23 strict application of any regulation pursuant to
24 article eight of this ordinance would result in
25 peculiar and exceptional practical difficulties to
0128

1 or exception al undue hardship upon the developer,
2 such property. In this instance because the own
3 they are needs to expand the building to
4 accommodate there medical condition or not live in
5 it, there is exceptional practical difficulties
6 that are part of this case which isn't isn't is the
7 other half of the variance the Y one hardship.

8 MS. KOWALSKI: When we get into the
9 architectual testimony that's when we're going to
10 be discussing what is necessary to accommodate the
11 handicapped usage.

12 MS. KOWALSKI: Are there any other
13 questions of Ms. Coffin?

14 THE CHAIRMAN: No other questions
15 for the board. I would open it to the had public
16 if there is any questions of Ms. Coffin. If not
17 you may proceed with your next witness.

18 MS. KOWALSKI: Mr. Starke in order
19 to allow you to continue with your testimony would
20 you please be so kind as to describe your
21 qualifications.

22 THE WITNESS: I've presented this
23 report before this board two, three times.

24 MR. RUBINO: Tell us licensed
25 architect in the State of New Jersey?
0129

1 THE WITNESS: Yes, I am had.

2 MR. RUBINO: How long have you been
3 licensed.

4 THE WITNESS: Too long.

5 MR. RUBINO: We'll accept that.

6 THE WITNESS: 29 years.

7 MS. KOWALSKI: As long as his
8 /PWAOERDZ is.

9 THE WITNESS: There has already been
10 a considerable amount of testimony by the planner
11 and the civil engineer, I think the best way to
12 describe the architecture is to go to A two which
13 is really how the the project began.

14 THE WITNESS:

15 MR. RUBINO: I'm just going to ask you
16 because I marked your overall architectural plans

17 as A one in evidence so you can if you can refer to
18 what you're talking about.

19 THE WITNESS: Sheet A two on A one.

20 R. ATTORNEY: Check /TKHAERGS that
21 was the attorney.

22 MR. STARKE: What we're showing here
23 is that the original building in my opinion was
24 traditional garage apartment that many of the Avon
25 lots had in which there was two parking places

0130

1 beneath it and a liveable space on the second
2 floor. I can't find no remnants of living spaces
3 original structure what would have made me believe
4 that it was not a two car garage with a two
5 bedroom, apartment over the top of it. If you look
6 at the area that is dashed lines, that's where the
7 original design was and it's relatively unchanged
8 on the second floor. What I've begun to do is
9 authorized to deal with the requirements forgetting
10 to the second floor, the exiting stairs are /-P
11 very, very steep and dysfunctional, actually, they
12 were actually risky. They were on the left hand
13 portion of the garage where the front door was you
14 can see in the photograph. And in order to
15 accommodate the access to the second floor, /TOEUD
16 re work totally the stairs and stairs that are
17 nearly four feet wide as well in a reasonable rise
18 and run which is going to be six on 12 versus what
19 we have now as eight inches rise nine inches rise
20 /HR-FPL 45-degree angle as well as incorporating an
21 elevator which was the key way of getting to the
22 second floor long-term. In order to do that I took
23 where the existing elevator is was the existing
24 bedroom and with that consent we then came with the
25 addition to the west of the property which is

0131

1 approximately 19 feet wide. That was going to be
2 of the knew bedroom which I've destroyed by having
3 the laundry room and the elevator in the existing
4 bedroom in the northwest corner and accommodating a
5 closet, rolling closet as well as handicapped bath
6 room has be turning radius is designed for
7 wheelchair access as well as shower and toilet
8 rooms that would make it easy to use those from a
9 wheelchair.

10 MS. KOWALSKI: Mr. Starke just for
11 purposes of testimony, of the eight-inch
12 encroachment into the side yard setback is for
13 better accessibility in the handicapped bathroom.

14 THE WITNESS: Correct. Eight-inch
15 overhang came from the fact that where the stairs
16 are adequate /-G a three-foot door then adding sink
17 adding five-foot turning radius and another five
18 feet for the toilet room stall cumulative dimension

19 that through that eight inches over the setback
20 /THRAOEUPB.

21 MR. RYAN: That's an overhang on the
22 second floor.

23 MR. STARKE: No, it's not and
24 projected down could have been overhang it's just a
25 complicated calculation to get the side yard
0132

1 setback and that's how the overage of eight inches
2 came but again if you look at the dimension of
3 19 feet it's based again on door width, sink
4 dimensions, turning radius at five feet and again
5 the toilet installed another five feet that's how
6 that encroachment was developed.

7 MS. KOWALSKI: Essentially Mr.
8 Starke what we have done on the proposed plan is we
9 have removed one bedroom, replaced it in essence
10 with a an elevator shaft and laundry and created
11 the second bedroom in the proposed addition so we
12 have went from two brooms and we're keeping two
13 bedrooms and you have created handicapped bedroom
14 bathroom, rolling closet combination.

15 THE WITNESS: Correct that was the
16 concept.

17 MS. KOWALSKI: That was the concept.

18 MR. STARKE: If we go back to drawing
19 A one, you'll see that because of the /-P flood
20 plain elevation there are no occupied spaces except
21 for the no /KWAEU write is set at the elevation
22 coming off the existing driveway you would come
23 directly up the stairs, at three-foot eight as I
24 said they are wide because there is an option early
25 onto put a chair lift in the stairs itself. But
0133

1 we're anticipating that later on down the read the
2 elevator and the hallway to the rear is what's key
3 to the design.

4 MS. KOWALSKI: So initially the
5 width of the stairs is also driven by the chair
6 lift that's proposed there.

7 MR. STARKE: That's part of the reason
8 for the extra wide chair. The elevator does not go
9 to the attic floor which was requested as a space
10 for a game room for grandchildren so that's where
11 the two and a half floor story comes from. There
12 is no bat room added certainly its objecting pride
13 attics space within the eaves in order to maintain
14 the edge requirements which as I said before
15 approximately one foot below the 35-foot maximum
16 height.

17 MS. KOWALSKI: There is no closet
18 noted anywhere.

19 THE WITNESS: There is no closets up
20 there as well.

21 MS. KOWALSKI: And that's with
22 because I heard miss Kenny say that would be her
23 escape area is that the intent.

24 THE WITNESS: Small turret area on it
25 it ten-foot had was her escape room which gives a
0134

1 little bid of a barred view to the Shark river.

2 Q. No handicapped accessibility?

3 A. No handicapped accessibility to the attic.
4 That's the concept of the architectural plan.

5 MS. KOWALSKI: Okay.

6 THE CHAIRMAN: Where are the stairs
7 to that?

8 MR. STARKE: The stairs to the attic?

9 THE CHAIRMAN: No the second floor
10 apartment.

11 MR. STARKE: There is no second floor
12 apartment. Oh, the main residence?

13 THE CHAIRMAN: Main residence which
14 is some for the owners, right.

15 MR. STARKE: Right if you go /THO A
16 one of A one, you come in and you come directly up
17 to a small landing and then you turn /-PB right.
18 We come then through the wall of the existing
19 building and you can see on drawing /-P A two, near
20 where the kitchen sink and the refrigerator an area
21 that goes down. It's an L-shaped stair.

22 THE CHAIRMAN: That's a also the
23 existing stair /STARBG stack part of -- yes and no.
24 The first.

25 THE CHAIRMAN: Trying to figure out
0135

1 where have the stairs are.

2 MR. STARKE: Moved to the outside of
3 the building that /TKPWAEUPD about three feet in
4 the I kitchen as it turns 90 degrees to the right
5 as you're going up that's in the same space.
6 Actually a little deeper. But in generally the
7 same location so yes, you go, the existing stairs
8 go up and turn right. But this configuration is
9 /TOELGT /HREU different again it starts outside the
10 building and if turns right and uses all that space
11 in order to get the 12-inch treads.

12 THE CHAIRMAN: Existing stairs go up
13 and turn right taking the proposed /-P stairs and
14 moving them to the left.

15 THE WITNESS: Yes outside the
16 building correct you again because they are so
17 steep I have to get considerably more run to do
18 that I'm able to do that in this design.

19 THE CHAIRMAN: So terminate /-P
20 inadvertent second floor in the same /SPAT /ST-RBG
21 /STARBG what's.

22 THE CHAIRMAN: And sounds like

23 terminate of the second floor.

24 THE WITNESS: No actually I have to
25 carve out more of the Florida joists run in the
0136

1 same direction so I'm adding about three feet more
2 and that's where the little bar sink is extended in
3 the kitchen to accommodate more of the run of the
4 stair. At least three feet, if not -- four rise
5 /ERS and three feet are were added to the stair on
6 the topside as well as additional space was added
7 at the bottom of the stair because right now the
8 first step is a line to the outside of the
9 building.

10 THE WITNESS: Again I'm trying to get
11 arise of six inches and run of 12 inches so that
12 you can maneuver these stairs safely.

13 MS. KOWALSKI: Mr. Starke, if you
14 don't mind I'm sorry are you /-P finished.

15 THE CHAIRMAN: No that's good.

16 MS. KOWALSKI: Okay. With regard to
17 the report submitted by Mr. Rooney and questions
18 from the boards, there is a request that the
19 applicant should explain why the existing two
20 familiar residents cannot be conversation exert
21 have /-D into single family residence and I know
22 you and I had I have had discussion on this would
23 you please be so kind as to explain to the board
24 why this residence is not, in consideration for
25 such conversion is that correct?

0137

1 MR. STARKE: Well first the original
2 unit is about 725 square feet. It's very small to
3 begin with. Once you start adding elevator shafts
4 and stairs they take up tremendous amounts of space
5 actually. And the fact that it's a two car garage
6 beneath the area, physically not enough space to
7 start adding elevators, stairs, bedrooms,
8 handicapped bath rooms in 700 square feet. So it's
9 just /SPAEURBL /SHAEL it's not very doable or can
10 be done.

11 MS. KOWALSKI: Where is the.

12 MR. RUBINO: It can be done did you
13 say.

14 MR. STARKE: It cannot be done.

15 MS. KOWALSKI: Where is the existing
16 apartment.

17 MR. STARKE: The existing apartment
18 is on the first floor if you go to drawing A one
19 it's on the right side. It's about 570 square
20 feet, the apartment.

21 MS. KOWALSKI: So, as the property
22 sits below grade technically we wouldn't be able to
23 convert it for any type of living space.

24 MR. STARKE: First floor not used for

25 any living space.

0138

1 MS. KOWALSKI: So really we would be
2 just essentially stuck with the second floor which
3 according to what we need to do to accommodate the
4 hand capped accessibility is just too small.

5 MR. STARKE: Yes.

6 THE CHAIRMAN: Addition actually has
7 less square footage than the /-G second apartment
8 by and addition 500 square feet the existing
9 apartment is 700 square feet had you've
10 incorporated the apartment into the main residence
11 you would be getting 700 square feet rather than
12 just of the 5600 with the addition you're saying it
13 can't be done but how many.

14 THE WITNESS: From a financial point
15 of view and practical point of view I don't believe
16 it can be done. You would have to literally rip
17 down the believe or --

18 THE CHAIRMAN: Why can't you put the
19 elevator /-P exactly where you have it and that
20 bedroom you have loose picked up by a bedroom in
21 the participate.

22 THE WITNESS: You mean on the first
23 floor.

24 THE CHAIRMAN: Correct.

25 THE WITNESS: The garage is in the

0139

1 way.

2 THE CHAIRMAN: /RAOUPB it through
3 the back of the garage.

4 MS. KOWALSKI: I don't think so.

5 THE CHAIRMAN: You can move the
6 elevator the other end of the second floor.

7 THE WITNESS: I looked at different
8 options and this seems to be the most reasonable
9 and practical.

10 THE CHAIRMAN: Looks like the
11 northeast bedroom is over the apartment so if the
12 elevator /PAOFD to that room, then you can keep the
13 northwest bedroom move the elevator to the had
14 northeast bedroom and then connect the two
15 apartments.

16 MS. KOWALSKI: Then looks like you
17 would be losing all the living space.

18 THE CHAIRMAN: Excuse me.

19 MS. KOWALSKI: Looks /PHRAOEUBG from
20 your propose value you would be losing all the
21 living space.

22 THE CHAIRMAN: Well 200 square feet
23 more than the addition, the elevator only take up
24 50, 60 square feet net again of 150 square feet.

25 MR. STARKE: I guess in my

0140

1 professional opinion those were not practical
2 design solutions from flow, from a plus point of
3 view, from a functionality point of view where does
4 the entry go.

5 MS. KOWALSKI: Bad design?

6 MR. STARKE: Bad design in my mind.
7 Didn't go in that direction the design approach.

8 MR. ROONEY: Is the apartment on the
9 first floor?

10 MR. STARKE: Yes, only.

11 MR. ROONEY: Only and seven feet?

12 MR. STARKE: Yes.

13 THE CHAIRMAN: We're just talking
14 about the impact of the extent of the improve
15 /PHEPBLTS to the dwelling and how that affects an
16 existing living space in the flood zone. Where I
17 believe in the fee ma requirements which is what
18 our land use ordinance is based on, in the flood
19 zone spent so much improvements on structure it
20 hits a certainly percentage the hole dwelling has
21 to come up and meet the flood requirements and
22 again that's not this boards jurisdiction but it's
23 something I think has to be considered. In the
24 grand scheme of this application.

25 MR. STARKE: I can look into that.

0141

1 Because weapon adding though occupied space, in the
2 existing unit, on the first floor.

3 THE CHAIRMAN: But I think it comes
4 down to a percentage the construction knowledge
5 you're investing to the value of the dwelling and
6 there is a certain percentage you trigger upgrading
7 the entire dwelling.

8 MR. STARKE: I believe that could be
9 true and my guess is given the value of this
10 structure /KP-T cost of the addition we would be
11 under that threshold.

12 THE CHAIRMAN: Even though we don't
13 know what the threshold is.

14 THE WITNESS: . I'm only going back
15 to /HEUFT which with we used to have 50 /PES /THREB
16 hold of increasing compliance of all the complies
17 /KWRAPBS and /WHEUT man changed that my guess is
18 would I estimate the value of the building just
19 intuitively we're going to be below, these are
20 expensive pieces of property a long here.

21 THE CHAIRMAN: I don't think it's
22 the property it's the dwelling the structure
23 itself.

24 MR. STARKE: Adding about 600 square
25 feet even at \$200 and /SKWAOEUR feet 120,000 on a

0142

1 piece of property that could be I'm not real estate
2 agent I don't know how price /SR-S been affected in

3 the last year, 900,000 dollar piece of property.

4 It's going to be less than 25 percent.

5 THE CHAIRMAN: I don't think like I

6 said earlier I don't think it's this boards

7 jurisdiction to really go through the details.

8 MR. STARKE: I understand the point.

9 THE CHAIRMAN: I would be

10 uncomfortable granting any kind of relieve with

11 without knowing more answers than that.

12 MS. KOWALSKI: Well if it's not

13 within the this boards /PE view, then it's not a,

14 it's not, it's really not your place to bring it up

15 certainly if you want to say something we have to

16 check into and make sure we meet the requirements,

17 you know as a condition.

18 THE CHAIRMAN: Yes.

19 MS. KOWALSKI: I don't know that

20 really this is your venue tone attorney but the

21 problem is you're asking for use variance and there

22 is a lot of issues that go into it and if we have a

23 glaring problem with something being built below

24 the elevation.

25 MS. KOWALSKI: Certainly we can

0143

1 submit that and make it a condition of proof value

2 and submit the appropriate documentation to Mr.

3 Rooney for review.

4 THE CHAIRMAN: It's my concern if we

5 grant approval of this plan as submitted, then the

6 building department looking at the flood department

7 says you can't do this for the flood department

8 there is no relief you cannot build this then the

9 statement subpoena made well the planning board

10 proved it.

11 MS. KOWALSKI: Then we've waist

12 permanent disability money the building department

13 says we can't do it then it's not going to get

14 done.

15 THE CHAIRMAN: But I don't want them

16 to be put in position they believe we'll give them

17 relieve inform some manner perosnally I'm /-P only

18 one of nine /-P /SROEUTS I would have like to have

19 hand on that before I grand approval before

20 potentially I grant I could I radio rye I couldn't

21 /WOD it.

22 MR. RUBINO: In theory uh-uh could

23 make it subject to the approval but it would be

24 nice to know whether or not and approval could be

25 granted.

0144

1 THE CHAIRMAN: Exactly.

2 MR. RUBINO: I don't know. Whether

3 approval can be granted from this or not maybe it

4 can maybe it can't, I don't know any of your

5 professionals no?

6 THE CHAIRMAN: Or maybe next time.

7 MR. SURMONT: I can't give you
8 definitive answer but I've been this scenario has
9 been playing in my mind over the last couple of
10 months, too.

11 MR. RUBINO: I can check into it it's
12 just.

13 THE CHAIRMAN: Maybe next month we
14 can get more exact testimony from the engineer on
15 the topic and make the board more comfortable.

16 MS. KOWALSKI: Would you be /HAEUBL
17 to do that.

18 MR. SURMONT: Yes.

19 MS. KOWALSKI: Okay.

20 THE CHAIRMAN: I think it's a big
21 issue that isn't really dressed.

22 MS. KOWALSKI: Okay. 26789 then
23 we'll address it.

24 THE CHAIRMAN: Okay but we can
25 proceed with the other testimony while we're here.

0145

1 MS. KOWALSKI: Okay are you
2 finished.

3 MR. STARKE: I'm finished.

4 MS. KOWALSKI: Does anybody else
5 have any questions of Mr. Starke with regard to the
6 drawing and design?

7 MR. ROONEY: I have a question. The
8 plans were a little /-P unclear with regard to the
9 this proposed covered porch, is that a covered
10 porch or an open deck on the second floor or what
11 exactly is that?

12 MR. STARKE: The concept was the
13 concept was to create a new porch outside the
14 bedroom and the kitchen area and to then connect
15 that porch on the second floor with the existing
16 porch with this bridge which is over the driveway
17 area. The request was to have an area at grade
18 that they could put a barbecue on and play /TH-T
19 yard. So, there was a patio not a patio because
20 its covered so you get into some issues of
21 definitions which on the first /PHRAOR underneath
22 the porch that's on the second floor there is a
23 patio, in the same footprint.

24 MR. ROONEY: I didn't follow that.
25 Is this covered or proposed porch an open slatted

0146

1 deck or is it a solid surface?

2 MR. STARKE: On the grade it's a
3 solid surface.

4 MR. ROONEY: At grade it's a patio.

5 MR. STARKE: It was my intention that
6 patios didn't have roofs on them or ceilings.

7 There is a porch over it.

8 MR. ROONEY: Well our ordinance
9 doesn't allow second floor decks. Unless they are
10 above improved porch over over a portion of a
11 principal building located in a required yard. So,
12 I'm trying to understand what this structure is
13 because you made need additional relief for it. If
14 there was a porch on the first floor covered porch
15 encroaching into the front yard, you would be
16 allowed to have an open deck above that. If there
17 is no structure below this and this is basically a
18 second floor deck, you're going to need front yard
19 setback relief because it's not permitted.

20 MR. STARKE: We're designing saying
21 if I design wood porch 18 inches or foot off grade
22 it does not need variance.

23 MR. ROONEY: That's my interpretation
24 of the code; is that correct?

25 MR. STARKE: Then that's what we can
0147

1 do. I mean it's given the ability in the ceiling
2 height that we have which is over ten feet, the
3 request by the owner was to have a patio concept
4 but I don't think it was the intending to make it
5 difficult from a planning point of view to create a
6 conflict.

7 THE CHAIRMAN: I was reading the
8 definition it's not very clear.

9 MS. KOWALSKI: It's not very clear
10 it's a porch.

11 THE WITNESS:

12 MR. STARKE: I'm reading the porch
13 definition right now and it doesn't in my mind
14 clarify either/or.

15 THE CHAIRMAN: There is a question
16 of definition of porch and whether the explanation
17 of what is proposed is a porch of or not a porch.
18 The I think the proposal to have the pavers or
19 slate at grade underneath the covered roof and the
20 question is that or is it that not considered a
21 porch I mean obviously /HR-S there is a wood deck
22 18 inches above you grade it is a porch stack
23 /STARBG yes.

24 THE CHAIRMAN: Why cannot can to
25 wood deck be slate that's what I'm discussing.
0148

1 MR. STARKE: Have it do with your
2 ordinance and ever town is little bit different and
3 that's where the confusion is coming in, whether,
4 you see in other ordinances the patio cannot have a
5 roof on it the patio is open to the air concrete or
6 impervious surface porches generally are wood and
7 usually covered.

8 THE CHAIRMAN: But yet you do see

9 concrete instead of porches that are raised above
10 grade.

11 MR. ROONEY: Is the, does it have a
12 roof though?

13 MR. STARKE: The deck on the second
14 floor.

15 MR. ROONEY: Is that pervious or
16 impervious?

17 MR. STARKE: Again goes to the /HOL
18 ordinances slotted wood, the water comes through
19 it.

20 THE CHAIRMAN: Slots the second
21 floor.

22 MR. STARKE: Second floor generally
23 two x 4s or 2 by 6s is with quarter inch spacing if
24 it becomes fiberglass then its impervious.

25 THE CHAIRMAN: So the roof consists
0149

1 of deck construction open decking so it's not a
2 water tied shingled roof.

3 THE WITNESS: No but it it was
4 fiberglass it would be.

5 THE CHAIRMAN: At the end of the day
6 it's an elevated deck looks like elevated deck.
7 Doesn't have a character of a porch roof. Rye
8 radio.

9 THE CHAIRMAN: We've of.

10 MR. STARKE: Well that's true, many
11 years of working in Ocean Grove and we went through
12 this time and time again trying to write the
13 ordinance and a porch, we had a porch that didn't
14 have have roof over it and it looked very porch
15 like and very Victorian. So, we have could go on
16 with this conversation for a long time.

17 THE CHAIRMAN: Envision is wood
18 frame deck is not consistent with what we consider
19 covered porch with be /POE /SEPBL /HREU second
20 floor patio.

21 MR. STARKE: In my mind this will
22 look like a porch with railings and.

23 MS. KOWALSKI: Mr. Starke since
24 we'll be coming back next can question we get a
25 rendering and perhaps clarify the issue?

0150

1 MR. STARKE: If you look at drawings
2 A four, the front elevation.

3 THE CHAIRMAN: Second floor porches.

4 MS. KOWALSKI: Are those columns
5 supporting?

6 THE WITNESS: They are columns, yes.

7 MS. KOWALSKI: So you have
8 supporting columns, it's not a free floating deck.
9 It's a covered porch.

10 MR. STARKE: It's also part of the

11 existing design which if you look at what's
12 happening at the right side and the attempt was to
13 make the whole elevation harmonious so by
14 projecting the railings over the first floor
15 apartment to the west as well as the turret which
16 gives the structure vertical /SRER /TAL lit it
17 creates a pleasing design which is where the idea
18 does it look like a porch, it looks balanced and
19 appropriate from the design point of view. Again I
20 went through this for many, many decades in Ocean
21 Grove trying to define this thing and what I was
22 always motivated to do was come up to a design
23 appropriate solution that would look attractive not
24 whether or not it was, you know with a group or
25 with not a group because what happened in Neptune

0151

1 again we tried to say it's a porch if it has
2 50 percent roof on it and we went back and
3 forthwith trying to design through ordinance what
4 appropriate design solution is and that's very
5 difficult to do. That's how this got generated the
6 design and I think it's very appropriate and adds a
7 lot of value to the /SKRAOEP /SKAEUP from a design
8 point of view. Not with the intent of hurting the
9 front yard with porches /TAEF don't look porches
10 are inappropriate to a front yard situation.

11 THE CHAIRMAN: The large tree
12 southwest that's coming out?

13 MR. STARKE: We're going try to save
14 it. It's very close within the drip line of the
15 porch and we believe with the columns the way it is
16 it can be trimmed back. If it were closer to the
17 building, I don't think we could maintain it. But
18 the fact that it's at the edge of the porch, ten
19 feet away from the where the foundation is going to
20 go I don't think we're going to does push much of
21 the root structure so good chance the tree will
22 survive.

23 MS. PLACITELLA: Mr. Starke I'm still
24 stuck with this I think your design is lovely ideas
25 are great but couldn't you tweak this so our

0152

1 maximum be building coverage on this undersized lot
2 would be 35 percent instead of 32.7 percent?

3 MR. STARKE: I couldn't reduce it to
4 meet to 35 percent.

5 A VOICE: (The guy next to rye
6 /KWRAPB) you could get closer though there is a lot
7 of room in the impervious.

8 THE CHAIRMAN: One person at a time,
9 please.

10 MS. KOWALSKI: Yes, with regard to
11 the impervious coverage, if necessary somewhat we
12 could do we have suggestion on the east side of the

13 property there is the existing patio, perhaps we
14 can have that removed and do grass plantings there.

15 MS. PLACITELLA: Okay.

16 MR. SURMONT: About had hundred
17 square feet so.

18 MS. PLACITELLA: There you go take
19 Dave with what would that bring you down to
20 roughly.

21 MR. SURMONT: About /# percent place
22 place 50 percent so okay there /SEB /SEPB the house
23 itself not counting the proposed covered porch is
24 only 75 square feet over the allowable 35 percent.
25 It's the 288-square foot porch at that we proposing

0153

1 that has to be counted under your definition of
2 part of building coverage that makes that number a
3 drastically higher than you're permitted.

4 MR. DAVEY: We deal with these
5 undersized lots all the time. Believe me some of
6 us for a long time and -- we all feel a lot more
7 comfortable with if that 42 is, you know, we
8 started at 35.

9 MS. KOWALSKI: I think that would be
10 good compromise to take out that patio area like I
11 said on the east side that's probably the easiest.

12 MS. PLACITELLA: Impervious talking
13 about the building coverage now.

14 MR. DAVEY: We're talking about --

15 MS. KOWALSKI: I'm sorry sorry sorry
16 sorry sorry sorry Dave Dave we do understands the
17 /-P end cap issue with the widths and all that
18 believe me that's all understood.

19 MS. PLACITELLA: Yes.

20 MR. STARKE: The way the addition was
21 generated that I needed four feet for the stair
22 that came across the building then what is the
23 reasonable depth for a bedroom and this turns out
24 to be right /TPOU about 14 feet. For the width of
25 or the width of the bid room so it's a bedroom

0154

1 that's 14 feet by 18 feet. Which I don't consider
2 that to be excessive in size. A bedroom, master
3 bedroom 12 feet by 15 feet is considered small. So
4 that's how that room size got generate and got and
5 pushed out from just a what's an appropriate size
6 bedroom for a master bedroom, king bed with
7 requirements for wheelchair and other
8 maneuverability.

9 MS. KOWALSKI: Mr. Starke you bring
10 up a good point when you talk about the wheelchair
11 within regard to the bedroom did you calculate
12 turning radiuses for that wheelchair within the
13 bedroom area?

14 THE WITNESS: That was definitely a

15 factor of how much room we needed to maneuver in
16 the bedroom. As I said, master bedroom 125 by 15
17 /EPL feet is considered small room on normal size
18 and 14 feet by 18 it was as big as I could go with
19 not exceeding other factors that were at play like
20 the property line setbacks and as well as coverage.
21 I tried to keep it as small as possible, but still
22 functional.

23 MS. PLACITELLA: Well you know it
24 really depends on how the bedroom is furnished how
25 it's used, if you have massive furniture then yes,
0155

1 you know you can --

2 MR. STARKE: I've shown on drawing
3 eight place place king sized bed and used furniture
4 maybe 12 by 15 is small bedroom. It's a very
5 average sized bedroom 12 by 15.

6 MR. STARKE: Not for wheelchair.

7 MS. PLACITELLA: I don't know that
8 you're saying wheel there is four feet white.

9 MR. STARKE: Wheelchair in order to
10 re date had wheel they're you need five feet in
11 diameter place place five feet, okay.

12 MS. KENNY: You're still ignoring the
13 fact that you have a 700-square foot apartment.

14 MR. STARKE: 500.

15 MS. KENNY: I'm sorry is the
16 apartment 700 square feet?

17 MR. STARKE: Apartment on the first
18 floor is little over 500.

19 MS. KENNY: 500 so you're still
20 ignoring the fact that you have that 500-square
21 foot apartment space.

22 MR. STARKE: In a flood plain.

23 MS. KOWALSKI: Which is not on
24 piling.

25 MS. KENNY: It's not occupiable.

0156

1 You're renting it right.

2 MS. KOWALSKI: If it was to be
3 renovated it would be not occupy believe this space
4 because you're trying to bring the lot into
5 conformity so if you're talking about renovating
6 the existing structure it would not be able to
7 occupy that space under the code. That's what the
8 grade is about. So, everything is forced to the
9 second level and when you look at that second level
10 there is just not enough space to accommodate the
11 hand can capped means maintain the living room
12 maintain the kitchen have the elevator shaft, the
13 first floor essentially becomes storage that's the
14 issue.

15 MS. KENNY: So when you do this /EPB
16 renovation that will no longer be a rentable

17 apartment.

18 MS. KOWALSKI: That's why it
19 doesn't -- the application itself has nothing to do
20 with the apartment because we can't convert the
21 house into a one family because we couldn't use
22 that space. If we could use at that space, this
23 would be a considerable conversion but since we
24 can't occupy that space, we can only go upstairs
25 for living space that is why we had to move out to

0157

1 the other side of the building. If you notice on
2 the plans, the space underneath the proposed master
3 bedroom bathroom area is only for storage because
4 it's in a flood plain so because you have a
5 preexisting nonconforming use of the apartment
6 there is nothing we can do with that. It would.

7 THE CHAIRMAN: Apartment is on the
8 first floor.

9 THE CHAIRMAN: They said you have
10 couldn't convert the apartment to.

11 MS. KOWALSKI: Excuse me.

12 MR. RUBINO: You could not convert the
13 apartment into living space as part of the house?

14 MS. KOWALSKI: Correct.

15 MR. RUBINO: Because it's below.

16 MS. KOWALSKI: Because it's below
17 the grade.

18 THE CHAIRMAN: I don't know if I
19 agree with that.

20 THE CHAIRMAN: The existing
21 apartment already exists and your intention is to
22 keep it.

23 MS. KOWALSKI: Well, that's the
24 preexisting non-conforming use as the owners could
25 not use it if we can try to convert this to a one

0158

1 family residence, it would mean nothing to the
2 owners because it doesn't give them additional
3 living space if it did not in the flood plain nine
4 feet above it would be useable living space as it
5 is now to the owners the conversion its use less
6 because it doesn't provide them with anything.

7 THE CHAIRMAN: When you say doesn't
8 provide them with useable living space what do you
9 mean by that?

10 MS. KOWALSKI: Right. They can't
11 live in that part of the building. They need --
12 this is what I was trying to explain before,
13 perhaps I wouldn't clear it's really not enough
14 room by going up and adding out we maintain the two
15 bedrooms for the primary unit but you create
16 handicapped accessibility. When you are talking
17 about converting the property as it is now, there
18 is nothing we can do with that apartment. It's

19 just become storage. So, to convert the essential
20 second floor into a living space you're then
21 talking about elevator shaft, mechanical, well the
22 mechanical down stairs keeping the laundry here a
23 larger bedroom it's really, you're losing, losing
24 living room space, you're losing living space in
25 general.

0159

1 THE CHAIRMAN: Well, in my
2 interpretation I look at the plan, the elevator and
3 the laundry on the northwest bedroom that can go in
4 the northeast bedroom just a swap and that would go
5 down to that first floor apartment.

6 MS. KOWALSKI: Right.

7 THE CHAIRMAN: Maybe move the stairs
8 outside to the west and bump the house out six,
9 seven feet whatever that is now got the new stairs
10 on the west swap the elevator not northeast bedroom
11 goes down to the first floor apartment now you have
12 the first floor apartment and the second floor
13 living space.

14 MS. KOWALSKI: Where with you are
15 you proposing to put the handicapped accessible
16 bathroom and bedroom because quite frankly if you
17 put it anywhere on the design losing the living
18 room and part of the kitchen.

19 THE CHAIRMAN: What can't it be on
20 the first floor?

21 MS. KOWALSKI: First of all --

22 THE CHAIRMAN: You can move a wall.
23 Its existing.

24 MS. KOWALSKI: Could you please
25 identify yourself.

0160

1 THE WITNESS: Maybe I can explain if
2 you have any -- Janet Creager. I live at 432
3 Jefferson Avenue.

4 MS. KOWALSKI: Can you please --

5 THE WITNESS: I came on behalf of
6 supporting the Kinneys, Nancy Kinney is my sister.

7 MR. RUBINO: Sworn.

8 THE WITNESS: I think maybe if I
9 could explain that downstairs apartment. Anyone
10 who has seen it it is very small, in fact, when we,
11 everybody that's been in there how can anyone live
12 there when they bought the home John came basically
13 with it. He's a single man. I don't think any
14 more than one person could live in that place.
15 It's very chopped up, too. There is a very small,
16 there what I remember it's been a long time but
17 it's a very small property that's chopped up.
18 Actually they never had the heart to tell John that
19 we wanted to use the whole house and he's been a
20 good tenant. He's also a person that mows the lawn

21 for them, and they feel that he, you know, watches
22 over the house when they not there but as living
23 space it's really not a practical living space the
24 whole apartment that they kin knees have again the
25 stairways are very step maybe if we can go back to
0161

1 why the impotence for this change is really for
2 handicapped accessibility. With the Parkinson's we
3 really don't know where this is going to go but so
4 it's a difficult time for them I know we're going
5 into all /HAEUB we could do this maybe we could do
6 that but the bottom line is they trying to renovate
7 their home to make it handicapped accessibility the
8 apartment downstairs is very impractical apartment
9 he happens to be happy there /SKPU no they are
10 trying to just leave that as it is. The upstairs
11 is just two bedrooms. I'm sorry the upstairs is
12 two bedrooms they are not large kitchen and living
13 room ask that's the entire house with /PWUPB
14 bathroom there is not even room for a /TEUBL in the
15 kitchen. The kitchen and living room are separated
16 by a counter to where eat. So, when this happened
17 and they had no intention of making changes before
18 this happened. What they are trying to do is to
19 make it minimal where they will be comfortable.
20 It's not making a big renovation just for the sake
21 of changing it or you know, we do this maybe they
22 do do a lot if they knocked down the house
23 completely but they are really trying to stay in
24 Avon. They like the neighborhood, like the
25 neighbors, they just want to enlarge the house a
0162

1 little bit to make it hadicapped accessible and I
2 think hopefully we can keep that in mind you know
3 the purpose of this whole plan. A lot of time and
4 money have been put in and it's not make a grand
5 home or something like that. It's just comfortable
6 home with two bed rooms. They have no intention of
7 bringing more people in the home. Again, John
8 tenant is single person and that's about how much
9 that little space could accommodate. And maybe if
10 you have any other questions you know, why or what
11 they plan to do, but they just want to enlarge the
12 bedrooms the path room and make the stairway.

13 MS. KOWALSKI: Make it handicapped
14 accessible?

15 THE WITNESS: It was the general
16 consensus between the architect and the Kinneys
17 that the conversion of the existing house to a
18 single family residence would not accomplish those
19 needs for a number of reasons mainly because this
20 is in flood plain below grade if there was
21 conversion they would essentially see /HREPBL I
22 loose that space as living space and be confined to

23 second floor for the handicapped portion of the
24 home. So it's just too /SPHAUFL.

25 THE WITNESS: Does anyone have any
0163

1 other questions for me that I can help you with as
2 to motivations or why they are doing what they are
3 doing.

4 MR. RUBINO: Tell us about the
5 condition it's your brother-in-law.

6 THE WITNESS: Yeah it was just last
7 year that it's been diagnosed with Parkinson's, at
8 this point now he is having difficulty walking.
9 There are other health issues also. Again, I think
10 it's a disease that we really don't know.

11 MR. RUBINO: How old is he?

12 THE WITNESS: Oh, 70.

13 MR. RUBINO: Approximately.

14 THE WITNESS: Early '70s I would say
15 place place does he live there all year right hand.

16 THE WITNESS: No it's a part-time
17 home.

18 MS. KOWALSKI: However I will /SHAEU
19 and I did say this in the application that at some
20 point in the within the future it is their
21 intention to make it a full year residence.

22 THE WITNESS: Right now it's a very
23 emotional time and everything is up in the air. So
24 they are not making any, you know,.

25 MR. RUBINO: Tell us physically does
0164

1 he have a part-time working around.

2 THE WITNESS: Shuffles and I think if
3 they were here and they are not here, they didn't
4 know when this would be but it would be very
5 difficult for his personal natural even to admit
6 this, I mean he's kind of macho and really it's
7 very frightening for them personally. I mean going
8 through this is strenuous enough. But just not to
9 know what your life is going to bring you the next
10 year or two.

11 MS. KOWALSKI: In the year since the
12 diagnosis have you personally seen deterioration in
13 Mr. Kinney's condition?

14 THE WITNESS: Yes.

15 R. ATTORNEY: And center your
16 knowledge and your discussions with your sister and
17 Mr. Kinney is his condition expected to continue to
18 deteriorate.

19 THE WITNESS: I believe so.

20 MS. KOWALSKI: Any further questions
21 by the board members?

22 MR. TALMAGE: I have a question for
23 Mr. Starke in the consideration of the designs that
24 you did authorized to make this property more

25 handicapped friendly was there any consideration
0165

1 given to building out to the east over the top of
2 the first floor apartment removing the existing
3 deck and utilizing that space rather than expanding
4 to the west?

5 MR. STARKE: A small amount? Only
6 and it was rejected for the for reasons of not only
7 did we hews the physician floor apartment but that
8 was not the critical it was in the flood plain.

9 MR. TALMAGE: Not talking about the
10 first floor the second floor.

11 THE WITNESS: Second floor it would
12 have to be accessible from the first floor.

13 MR. TALMAGE: Right.

14 MS. KOWALSKI: And I guess /STARBG
15 /STAGS the assumption was we went to the east I
16 would have to go out to the east on the first floor
17 and tap into the resources on the first floor well
18 in terms of finding verticality for the elevator or
19 the stairs..

20 MS. KOWALSKI: Did that become a
21 more difficult design, Mr. Star?

22 MR. STARKE: More difficult design.

23 MS. KOWALSKI: What was prohibited
24 by it?

25 MR. STARKE: I didn't like that

0166

1 approach.

2 MS. KENNY: But that would definitely
3 cut down the building coverage?

4 MR. ERNST: Yes.

5 MR. STARKE: It would but as I look
6 at it there is only about 12 /TKPAOET to the east
7 that of its where the porch and the views are to
8 the river. It doesn't seem a practical approach
9 because that was key living area for the porch, the
10 views, it doesn't seem appropriate architectually.

11 MR. TALMAGE: Well wouldn't be losing
12 the porch and views because you do have a porch
13 over the first floor portion that sticks out
14 towards and pool Avenue.

15 MR. STARKE: Small porch.

16 MR. TALMAGE: If you were to go to
17 that approach you still would have views to the
18 river you wouldn't be losing that totally.

19 MR. STARKE: But I would then go back
20 to saying I don't think it's still practical.

21 R. ATTORNEY: I was going to /SHAEU
22 are you really gaining the appropriate amount of
23 space for handicapped accessibility in that area?

24 MR. STARKE: I don't think I could
25 come up using at that approach with a reasonable

0167

1 solution that I would recommend to a client saying
2 this is an appropriate use of your money and the
3 space.

4 MR. TALMAGE: That's your opinion,
5 sure. You're entitled. I have another question on
6 the handicapped bathrooms you have a turn radius of
7 5 feet for the wheelchair and you also I believe
8 testified saying that the depth of the shower stall
9 and the toilet stall is five feet also.

10 THE WITNESS: Right.

11 Q. How did you come up with -- why not 4
12 feet two inches to bring that in 8 inches to be
13 within the side yard set stack?

14 A. Five foot is standard dimension for
15 handicapped code and in this case it's appropriate
16 with a /SPEUFRPBG /-G door outward where you can
17 roll into the handicapped stall in a wheelchair and
18 there is enough room in front of the toilet for the
19 wheelchair.

20 Q. Removing eight inches there would not
21 give you?

22 A. No I would have to go in the other
23 direction, no I need five-foot depth at what
24 minimum to make that work.

25 MR. TALMAGE: Okay.

0168

1 MR. ERNST: What about those stairs
2 with the seat that goes up is?

3 MR. STARKE: Code requires three-foot
4 stairs at three-foot /# that's enough to start
5 doing the railings and the flip up seat which is,
6 you know, approximately.

7 MR. ERNST: Do you need the flip up
8 seat since you have the elevator?

9 MR. STARKE: It's a facing issue from
10 the way the elevator is \$40,000 the chair lift is
11 six, seven thousand. So as the idea was this would
12 be the first step for the lift.

13 MR. ERNST: Elevator.

14 MR. STARKE: Shaft and everything is
15 going in right now.

16 MR. ERNST: Actual elevator will not
17 be.

18 MR. STARKE: When we last talked six
19 months ago it was something could go in a year from
20 now if dedicated shaft was this it's going in at
21 the appropriate time but it's definitely that the
22 shaft is there the machine room elevator doors all
23 of those infra structures pieces are accommodated
24 and permanent part of the design.

25 THE CHAIRMAN: I want to jump on the

0169

1 comment Mr. Talmage made regarding going to the
2 east. I'm concerned with the extent of going to

3 the west very hard very tall 35 feet essentially
4 three stories when you're standing on pool Avenue.
5 And I didn't see the the reason why you couldn't
6 only 12 feet to the right on the east but there
7 could be bump out on the west six, seven feet to
8 get the stairs in, move the stairs still access the
9 elevator from that door on the right there, that
10 /ROEFLS underneath the stairs. I can /STEUFL see
11 how you can provide the stairs and elevator but
12 losing the rest of it the floor and the storage
13 area and just going over to the apartment to the
14 east it's more consistent with the master plan of
15 the town. I know you mentioned the views of the
16 river which really shouldn't be a factor from this
17 boards perspective should be more of the master
18 plan we're looking at. I mean I can see that more
19 of a desirable improvement than the master plan
20 instructed than the volume that's going to the
21 west.

22 MR. STARKE: I can understand your
23 point of view.

24 THE CHAIRMAN: And just getting back
25 to the one family two-family issue was there ever
0170

1 consideration given to two-family as a bargaining
2 chip with the board and making this one family, I
3 mean the town always like to get rid of multifamily
4 I think consideration to be to one family there
5 maybe little /PHAOR benefit to the town and
6 therefore maybe a little more negotiation on your
7 behalf.

8 MS. KOWALSKI: I don't think that
9 we're really considering it a bargaining chip
10 simply because to /TKPWEUP give it up really means
11 nothing with regard to what they need and
12 requirement if, certainly we could renovate to
13 where the property could be utilized for
14 handicapped access, it would have been quote
15 unquote bargaining chip but you know given the
16 design, what the kin knees felt they needed, you
17 know, to accommodate their life style which is
18 essentially, you know maintaining two bedroom, we
19 never really thought of it as a bargaining chip
20 attorney dope I don't want to use -- I don't
21 understand what the chairman is saying.

22 MS. KOWALSKI: Yeah.

23 MR. RUBINO: Maybe bargaining chip is
24 the wrong word, but certainly by giving two-family
25 use you would be granting property from the use
0171

1 standard into conformance with the ordinance which
2 would definitely be a recognized benefit under the
3 land use statute, number one and number two, you no
4 longer need a use variance. So, I'll call it a

5 bargaining chip it's certainly something from a
6 practical standpoint.

7 THE CHAIRMAN: It would improve the
8 /SRAPBGS is on this proposal.

9 MS. KOWALSKI: So, are you
10 essentially stating that if we take out -- let me
11 just phrase this to you, that if we got rid or
12 evicted the tenant and said this is now a singlee
13 family home because we convert that unit to storage
14 or for whatever reason that our expansion out to
15 the west side of the property would be more
16 favorably looked upon?

17 THE CHAIRMAN: I don't want to grant
18 that kind of complete statement I still have
19 concerns for volume. I was just wondering if that
20 was ever a consideration from the applicant that
21 would just increase the /SRAPBGS is of approving
22 this kind of application. I don't want to say it's
23 one for one, I don't know I'm still=.

24 MS. KOWALSKI: I don't know that I
25 can make that statement just like you're unwilling

0172

1 to make yours. I don't know that I could, you
2 know.

3 THE CHAIRMAN: You don't know if
4 it's a consideration.

5 MS. KOWALSKI: I don't know that.

6 A VOICE: I don't think it's fair.

7 R. ATTORNEY: That's not A fair
8 question.

9 THE CHAIRMAN: Okay.

10 MR. RUBINO: Probably going to have
11 to come back. Might want to consider it. Let us
12 know.

13 MS. KOWALSKI: I understand but by
14 the same token if you're looking for that type of
15 concession there is really no use variance issue it
16 becomes the bulk variances.

17 MR. RUBINO: Which are still
18 substantial.

19 MS. KOWALSKI: Which are substantial
20 but then we get back to the term of using the
21 bargaining chip you know is that what we want to
22 do. I would certainly talk to my clients. We do
23 have to come back anyway. But, I could certainly
24 bring it to their attention and see what they say.

25 THE CHAIRMAN: Looking at the

0173

1 application look at the /SRARPBGS and discharges of
2 ever approval we make.

3 MS. KOWALSKI: I understand.

4 THE CHAIRMAN: Thing making this one
5 family would be huge advantage to overcome
6 42 percent 39 percent whatever it might come down

7 to.

8 MS. KOWALSKI: I'm just very
9 concerned that and let me just give a frame of
10 reference. I'm zoning board attorney for Neptune
11 Township. I have a lot of concerns when a designs
12 are prevented for specific reasons and the board
13 tries to adjust significantly the designs because
14 those designs have been considered are put in place
15 for a reason by the property owners and I'm not
16 suggesting that the board is trying to do this. I
17 will certainly bring to my client's attention the
18 ability to remove, you know the multifamily use if
19 that's the case that's fine, but I think we would
20 still move forward with the design as presented for
21 at least the expansion portion because of my
22 client's necessitate. So, you know, just /KAOEFP
23 in mind that you know, we're willing to at least
24 I'm willing to talk to my client about bringing the
25 property into conformity that way but the design is
0174

1 designed for a reason.

2 MR. RUBINO: Well there is just one
3 thing Mr. Rooney was just doing some doodling up
4 here and why don't you explain about the porch.

5 MR. ROONEY: The board has raised an
6 issue with regard to the building coverage and
7 you've got this fairly large second floor porch or
8 deck, is it possible to reduce that or perhaps even
9 eliminate it? In the interest of reducing your
10 quote building coverage? It sounds like you may
11 have remedy on impervious coverage with the patio
12 going to grass but how critical to your project is
13 the second floor deck porch?

14 MR. STARKE: I would have to consult
15 with my client but certainly there is flexibility
16 there much more than in other areas that we have
17 discussed tonight, to be honest the issues of the
18 bedroom, the elevators, the bathrooms are really
19 quite, you know, well founded in their design.
20 Certainly there is much more flexibility in the
21 deck. In the porch especially as a dry lot
22 coverage issue.

23 MS. KENNY: If you were to eliminate
24 the covered porch how much would that decrease the
25 building coverage?

0175

1 MR. STARKE:

2 MR. SURMONT: It would bring it down.

3 MR. DAVEY: I said had he we like the
4 sound of the 30's.

5 MR. SURMONT: I'll tell you what it
6 would be it would bring it down to 1720 if Mr.
7 Rooney I wouldn't /-P /-P mind 1720 over 4700.

8 MR. ROONEY: 36 and a half percent.

9 MS. PLACITELLA: There you go.
10 MR. DAVEY: Eliminating totally.
11 MR. SURMONT: Eliminating it totally,
12 yes. The whole bridge element and the entire third
13 check check.
14 MS. KENNY: That would certainly seem
15 favorable over the -- I mean the 42.7 percent is
16 just something that concerns me very much. And the
17 fact that it is an undersized lot to start with
18 you're going to have an awfully big lot on an
19 undersized lot if you're covering 42.7 percent.
20 MS. KOWALSKI: Well we'll certain
21 take that into consideration and discuss it with my
22 client.
23 MS. KENNY: Thank you.
24 THE CHAIRMAN: Maybe this is a good
25 time to carry this until the next month.

0176

1 MS. KOWALSKI: If we come next month
2 can we come back before the other dispute, please?
3 THE CHAIRMAN: They have already
4 been here twice.
5 MR. RUBINO: The problem is you
6 didn't see the other case. It was supposed to be
7 heard tonight and that's also an appeal and there
8 is somebody being held up if the board looks on
9 that depending which way they look on it developing
10 there sight they were here last month and there was
11 a mix up so we don't hear them last month so I mean
12 we really have to hear that case next month.
13 MS. KOWALSKI: What you're telling
14 me booked up next month.
15 MR. RUBINO: You can come and wait.
16 MS. KOWALSKI: Sit and waist money
17 had probably not going to reach us extremely
18 contentious with the other two matters.
19 MR. BRAUTIGAN: Well the clerk in the
20 two cases you had to want is.
21 MR. RUBINO: We are just /TEUFPG you
22 off you might to want say give us June.
23 MS. KOWALSKI: We'll take June.
24 MR. RUBINO: Changes to the plan get
25 them in.

0177

1 MS. KOWALSKI: We'll take June.
2 MR. RUBINO: Okay.
3 A VOICE: /WHAUP review what is
4 holding this up now, it would be the porch is there
5 something else?
6 THE CHAIRMAN: Well, 42 percent very
7 large number for building coverage. I think it's
8 probably one of the larger of the lot and
9 impervious is /-P stumbling block.
10 MS. KOWALSKI: Minute /PHAOUS /-D.

11 THE CHAIRMAN: Can possibly.

12 A VOICE: So that the issue the

13 porch.

14 MS. KOWALSKI: No the other issue is
15 with regard to the flood plain. We'll take care of
16 that with the engineer.

17 MR. RUBINO: You have the issue with
18 the two coverages, lot coverage and impervious
19 coverage.

20 THE CHAIRMAN: Multifamily I mean
21 that's my concern expanding two-family and really
22 expansion.

23 A VOICE: Well, I mean yeah but they
24 are not -- I mean they are expanding their home.

25 MS. KOWALSKI: You had asked for

0178

1 some submissions with regard to whether or not the
2 building would even --

3 THE CHAIRMAN: FEMA issue.

4 MS. KOWALSKI: FEMA issue we'll have
5 Mr. Surmont address the next time if appropriate
6 and we have discussions with our client and we
7 choose to submit amended plans they can be a
8 submitted ten days prior?

9 MR. RUBINO: Probably be off probably
10 you would be better off trying to get it done ahead
11 of time it might help because Mr. Rooney and I
12 should probably talk about it little bit now that
13 we know the issue, if you do do research with
14 regard to the elevations say within a month, and
15 get something to us so we can take a look at it
16 have a little more time, couple days to look at it.

17 MS. KOWALSKI: I would think
18 Mr. /SHER /PHOPBTS submission would come physician
19 because that's probably what would be the driver
20 force as to whether or not we're going to proceed
21 and we're carried to what the /SAEBGD Thursday in
22 June.

23 THE CHAIRMAN: Correct. Second
24 Thursday in June.

25 MS. KOWALSKI: No further notice.

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1 THE CHAIRMAN: No further notice.

2 MR. RUBINO: Anybody have that date?

3 A VOICE: June 11th.

4 MR. RUBINO: June 11th. No further
5 notice.

6 MS. KOWALSKI: Ladies and gentlemen
7 thank you very much. Have a great evening.

8 THE CHAIRMAN: Notion to carry this
9 to June.

10 MR. RYAN: Make the motion.

11 MR. TALMAGE: Second.

12 Cliff cliff he /UFPL /EUFPL /AEBGD

13 this in /SROEFT on the motion Mr. Dave yes.
14 MR. ERNST: Yes.
15 MS. KENNY yes /PHABG laugh laugh yes
16 place place yes.
17 MR. RYAN: Yes.
18 MR. TALMAGE: Yes mall loan I.
19 THE CHAIRMAN: Yes.
20 (Adjourned.)
21
22
23
24
25