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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 poured. 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 wait than any other person's wait  
12 or whether or not you might lean a certain way  
13 because you do know them. Maybe we could just pole  
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 sect 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 realize 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, 2008,  
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.

0025

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 /SEPB 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 /SEP 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 architecturally.

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 role 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.

0179

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