

**OCEANPORT PLANNING BOARD
MINUTES
October 10, 2012**

Chairman Widdis called the meeting to order at 7:31 p.m. and announced that the meeting had been advertised in accordance with the Open Public Meetings Act.

Chairman Widdis led the flag salute.

MEMBERS PRESENT: Mr. Kahle, Mr. McCarthy, Councilman Johnson, Mr. Kleiberg, Mr. Sullivan, Mr. Whitson, Mr. Fichter, Ms. DeSousa, Mr. Widdis

MEMBERS ABSENT: Mr. Savarese

OFFICIALS PRESENT: Jeanne Smith, Board Secretary, Rick DeNoia, Board Attorney, William White, Board Engineer/Planner

OLD BUSINESS:

1. PB File: 2012-06
105 Horseneck Point Road
Block 109, Lot 14
Request for Bulk Variance(s) for Minimum Lot Width, Side Yard Setback and Rear Yard Setback for the demolition of existing dwelling and construction of new single family dwelling

Chairman Widdis advised that the matter concerning 105 Horseneck Point Road had been carried to the November 28, 2012 meeting at the request of the Applicant and that additional notice was not required.

EXECUTIVE SESSION:

At 7:34 p.m. the Secretary read a Resolution authorizing the meeting to enter Executive Session for the purposes of pending litigation matters concerning the Borough's Builder's Remedy Suit on a motion made by Mr. McCarthy and seconded by Mr. Whitson and approved by the Board.

At 7:50 p.m. the Board returned from Executive Session and re-opened the Regular Meeting on a motion by Mr. Whitson which was seconded by Mr. Kleiberg and approved by the Board with same members previously present.

Chairman Widdis stated for the record that Councilman Johnson and Mr. Kahle had removed themselves from the hearing for the next matter as appropriate due to the interpretation being requested.

NEW BUSINESS:

2. PB File: 2012-04
Hill Court
Request for Interpretation
-
- A-1 **Zoning Officer's Denial Letter dated March 30, 2012**
 - A-2 **Correspondence from Maser Consulting dated May 11, 2012**
 - A-3 **Map of Knob Hill prepared by Todd & Phraner, Surveyors, 1952 unsigned subdivision map which was never filed with the Monmouth County Clerk's Office.**
 - A-4 **Filed Map of Dobbs Terrace prepared by O.W. Morris, Civil Engineer dated January 17, 1953**
 - A-5 **Borough of Oceanport Tax Map Sheet dated January 1956**

- A-6 Borough of Oceanport Tax Map, last revised 1985
- A-7 Tax Search for Lot 17 performed by Data Trace
- A-8 Tax Search for Lot 18 performed by Data Trace
- A-9 Email correspondence with Monmouth County Division of Planning, dated September 17-September 18, 2012
- A-10 Summary List of Deed Transfers for Lot 17 and Lot 18 prepared by Martin McGann, Esq.
- A-11 Title Search for Lot 18
- A-12 Title Search for Lot 17
- A-13 Photograph of House on Eatontown Boulevard and Lot to the Rear viewed from Hill Court, taken by Mr. McGann's Office, not dated.
- A-14 Photograph of House on Eatontown Boulevard to the Rear and Side viewed from Hill Court, taken by Mr. McGann's Office, not dated.
- A-15 Photograph of Front of House on Eatontown Boulevard viewed from Hill Court, taken by Mr. McGann's Office, not dated.
- A-16 Survey of Property prepared by Charles V. Bell Associates Inc., dated Dec. 30, 2011, last revised March 13, 2012

Martin McGann, Attorney for Applicant Concetta Barone, summarized the purpose for the interpretation being requested, gave a description of the process pursued to date by the Applicant to develop the lot in question and the concern of the Board's Engineer regarding merger for commonality of title with the adjacent lot.

Mr. McGann introduced the following items for the record Zoning Officer's Denial Letter dated March 30, 2012 which was marked as **Exhibit A-1** and Correspondence from Maser Consulting dated May 11, 2012 which was marked as **Exhibit A-2**. Mr. McGann stated that Mr. White's May 11, 2012 letter raised the issue of merger. Mr. McGann stated he had reviewed the property and it was his opinion that merger did not apply for several reasons including 1) the lots were back to back lots which was an exception to the Lochner case, 2) under the old Planning Act prior to January 1, 1954 the Old Map Act the lot may have been created or may have been created after January 1, 1954 which was the Planning Act and the significance was that if the perfection of the subdivision occurred after January 1, 1954 there was no merger but if it had occurred prior to January 1, 1954 under the Old Map Act then the merger law would apply for undersized lots.

Mr. McGann introduced the following item for the record Map of Knob Hill prepared by Todd & Phraner, Surveyors, 1952 unsigned subdivision map which was never filed with the Monmouth County Clerk's Office which was marked as **Exhibit A-3**. Mr. McGann commented that it was interesting to note that the subject property was located behind Lot 2 which had frontage on Eatontown Boulevard and that house existed then at that time and faced Eatontown Blvd. and described additional dwellings near the site. Mr. McGann noted that the map was not filed but Hill Court appeared later on the Tax Map as well as on a subdivision map filed later for called Dobbs Terrace.

Mr. McGann introduced the following item for the record Filed Map of Dobbs Terrace prepared by O.W. Morris, Civil Engineer dated January 17, 1953 which was marked as **Exhibit A-4**. Mr. McGann noted that the Dobbs Terrace map was filed and pointed out that Hill Court was shown up in the corner and that it was recognized by the Borough as a right of way although the records in Freehold showed no dedication of a right of way for Hill Court and that the town recognized it based upon the Exhibit A-3 – the unfiled map. Mr. McGann expressed that his intent was to establish consistency in that area subdividing Oceanport showing that there were existing structures back in 1953 and that the pattern hadn't changed since that time.

Mr. McGann introduced the following items for the record Borough of Oceanport Tax Map Sheet dated January 1956 which were marked as **Exhibit A-5** and Borough of Oceanport Tax Map, last revised 1985 which were marked as **Exhibit A-6**. Mr. McGann stated that the 1956 map shows the 2 lots in questions as not having merged demonstrating further continuity which was also shown on the 1985 tax

map. Mr. McGann then discussed how the municipality had taxed the two lots – separate tax bills for each property.

Mr. McGann introduced the following items for the record Tax Search for Lot 17 performed by Data Trace which were marked as: **Exhibit A-7**, Tax Search for Lot 18 performed by Data Trace which were marked as **Exhibit A-8**, and Email correspondence with Monmouth County Division of Planning, dated September 17-September 18, 2012 which were marked as: **Exhibit A-9**. Mr. McGann stated that the information on file with the County was the earliest zoning map filed with the Monmouth County Planning Board was 1979 and continued through the latest 1996. He continued that he provided this information was because of transfers of title which occurred before the zoning ordinance that governs the property came into being.

Mr. McGann introduced the following item for the record a Summary List of Deed Transfers for Lot 17 and Lot 18 prepared by Martin McGann, Esq. which were marked as **Exhibit A-10**. Mr. McGann described the deed transfers, dates of transfer, names of property owners for Lot 17 and Lot 18, points of commonality of title, the history of the uses of both lots, prior case law that addressed individuality of lots based on uses.

Mr. McGann then introduced the following items for the record, Title Search for Lot 18 marked as **Exhibit A-11**, and Title Search for Lot 17 which was marked as **Exhibit A-12**. Mr. McGann further detailed the exchanges of the property, family members involved and the current titles for each of the lots with commonality of title occurring from 1982 to 2007.

The following persons were sworn in: William White, Board Engineer/Planner and Concetta Meloni, Applicant and Owner.

Concetta Meloni testified that she lived in the house on the front lot in 1953 at 16 years old, that she believed the house was constructed in 1952 and described who occupied the house and when including that she lived there until 1961, she lived there with 5 siblings and her parents, that her father passed away in 1959, a sister that left when she married in 1960, her mother until she was able to secure housing in the senior building in Oceanport but her mother had died in that house and that her brother Anthony and his wife resided in the house until his wife passed in 2003 and brother Anthony until he died in 2006 after which the Applicant's son Marc Meloni purchased the house.

Ms. Meloni further testified to the uses on each of the lots and that the vacant lot was never used other than to be maintained. Mr. McGann then introduced the following items for the record, Photograph of the Rear of the House on Eatontown Boulevard and lot in the Rear viewed from Hill Court taken by Mr. McGann's Office which was marked as **Exhibit A-13**, Photograph of the side of the House on Eatontown Boulevard viewed from Hill Court which was marked as **Exhibit A-14**, and Photograph of the Front of House on Eatontown Boulevard viewed from Hill Court which was marked as **Exhibit A-15**. Ms. Meloni testified that the house had always faced Eatontown Boulevard.

Mr. McGann introduced the following item for the record, Survey of Property prepared by Charles V. Bell Associates Inc., dated Dec. 30, 2011, last revised March 13, 2012 which was marked as **Exhibit A-16**. Mr. McGann described that the proposed house for Lot 17 would face Hill Court. There was discussion between the Chairman, Mr. DeNoia and Mr. McGann that the Exhibit A-16 was not for the purpose of seeking that approval but was being used to demonstrate the orientation of the proposed house and the orientation of the existing house for the interpretation being sought and its impact on good planning.

Mr. McGann raised several points to be addressed: 1) Would Lochner apply or was there an exception to Lochner?, 2) Had either of the lots merged as far as identity whether through a merger of metes and bounds description combining 17, 18 into one metes and bounds description, 3) Was there a loss of identity due to use or building of structures that may have been used in conjunction with the principal use on Lot 18. Mr. McGann summarized that those were the points the courts looked at which he found

while researching the facts which each case was fact sensitive when applying to existing law but pointed out that the Court in the Simone case commented on the principles of elemental fairness may require a municipality to recognize the situation out of equitable and fairness as what transpired over in this instance over the last 60 years and that was essentially their position.

Mr. DeNoia asked for the cite on that case. Mr. McGann answered Scardigli vs. Haddonfield, 300 New Jersey Super 316, and also Simone.

Mr. McGann also requested that the Board consider that municipalities have the power to merge lots under Lochner – whether or not they exercise that power was under the discretion of the municipality and in the instance of the subject lot it had always existed as separate lots on the tax maps, billed separately for tax bills and any conveyances that resulted in commonality of title had, in the eyes of the municipality, not resulted in merger which under Section 55 of the Land Use Law they could have within 2 years of the event.

Chairman Widdis asked questions about the names of the property owners and their relations to the Applicant, and how the lot was used.

Mr. White asked about the title of the 2 lots in 2007 which in 2007 was owned by the same 3 parties.

Chairman Widdis asked wouldn't that constitute merger.

Mr. McGann answered no, it was commonality of title – the Board had to determine if it was merger.

Chairman Widdis asked in 2007 it was still owned by the same. Mr. McGann answered that commonality of title commenced in 1982 and ending in 2007 as shown on the Summary List of Deed Transfers.

Mr. White asked about the testimony on the use of the rear lot and questioned the depressed curb that extends from Lot 18 past the property line onto Lot 17 and it appears that there was a driveway there at one point in time and asked if that were the case. Mr. McGann responded that it was in the right of way and asked Ms. Meloni if there was ever a driveway on Lot 17 to which she responded that they put in a piece of driveway but they had removed it. Mr. McGann asked Ms. Meloni when the depressed curb was put in and she answered she believed the man who put the road in and did not recall what year it was done.

Mr. DeNoia asked for clarification regarding the statement that “they put in a piece of driveway but we removed it”. Ms. Meloni answered it was done by the man that built the house on Lot 21 – the big house next to their vacant lot and they had the driveway removed. Mr. McGann asked was there an encroachment from Lot 18 to Lot 17 in that area which Ms. Meloni couldn't answer but indicated that the driveway should have stopped and the curb where the fence was and indicated same on the plan.

There was additional discussion about Hill Court, the cul-de-sac and issues with vehicles turning onto the road because the Dead End sign isn't directly visible and they go down the end to turn around. The concern was something that should be redirected to the town and not the Planning Board.

Mr. White asked where Mrs. Meloni resided and was told at 55 Wyckoff Road, Eatontown. Mr. White asked if there had ever been any type of structure even temporary structure on the back lot which Mrs. Meloni answered that there had been a shed there while the fence was being put up but gave the shed away.

Mr. Widdis asked if the driveway was on the property line and was told that the fence was shown on the survey as right on the property line, There was additional discussion about the shed and that the shed was straddling the line but was only there for about a week.

Chairman Widdis opened the meeting to questions from the public on that witness only.

PUBLIC:

As no one from the public wished to be heard Chairman Widdis closed that portion of the meeting.

Chairman Widdis asked Mr. McGann if he had any additional testimony and answered no there was no additional testimony.

Mr. Whitson asked what year the fence was built. Mrs. Meloni said she did not remember and didn't want to guess because she did not remember.

Mr. Kleiberg asked if they obtained a zoning permit to put the fence up and was told yes.

As there were no additional questions by the Board or the public, Chairman Widdis requested that Mr. DeNoia advise the Board with a summary of the various cases concerning this type of matter. Mr. DeNoia asked Mr. McGann if he wanted to present his summary and was told no, but would reserve the opportunity to address any points necessary.

Mr. DeNoia gave a summary of the cases discussed surrounding lot mergers, the arguments of each one, principles, a town's action or non-action to merge lots, what items were found applicable, commonality of title, what impact a town's action or lack of action had, the Municipal Planning Act of 1953, perfected subdivision protected into the future and how, whether the subject map was protected and reasons why not, the common ownership of the subject lot and the appearance of merger; whether testimony had sufficiently proved protection, why he believed the Planning Act that would protect a subdivision into the future was not relevant. Mr. DeNoia stated that the issue before them was do they have a Chirichello case and gave an explanation of that case and advised that the Board would have to determine if the lots were back to back, was the curve a factor, was the testimony concerning use of the vacant lot for playing, maintaining of the lot, storage of a shed on the lot and were those indicators of some benefit or use to the primary lot with the back lot and the Board would need to determine if it was being used as one lot because if it were then there was not a lot zoned as a utility but had a purpose with regard to the primary lot and those were factors that the Board needed to consider. Mr. DeNoia stated that if a member believed that a merger took place a subdivision would be necessary to create a separate lot and if it was believed that a merger had not taken place then the application would then be back for a lot with variances and directed that was that Board needed to determine.

Mr. McGann responded that he disagreed with Mr. DeNoia's comments and reasoned why using the litigation from Simone and how the depiction of lots shown on tax map and tax bills was a factor because a municipality under Lochner had the power to merge and the municipality hadn't exercised that power as evidenced by the 3 different years tax maps and that the Board must consider as the Court had, how the municipality treated it since 1953 being the date of the first conveyance, argued how the old maps documented the lots and quoted the Chirichello case's finding regarding lots that had frontage on different streets. There was additional discussion amongst Mr. DeNoia and Mr. McGann regarding the arguments made in support of no merger taking place, what the Board had to decide and the facts the Board would consider and the purpose for which the Applicant was there for a decision concerning the need for either a subdivision or were the lots separate and only in need of bulk variances for the proposed house to be constructed.

Mr. Whitson asked if the two lots separately were conforming lots. Mr. McGann answered no and that they would not be totally conforming if they had merged.

Mr. Fichter what would be the non-conformance and was told it would be lot width and lot depth.

Mr. Kleiberg commented that they are both corner lots. Mr. White corrected that statement and explained why the lots were not both corner lots and that only the lot fronting Eatontown Blvd was a corner lot.

Mr. White added for clarification that Lot 17 was non-conforming as to lot area and lot width and Lot 18 was non-conforming as to lot area, lot width and lot depth. There was additional discussion over the dimensions of the lots that are the non-conformities.

Chairman Widdis opened the meeting to statements from the public on the application.

PUBLIC:

Andrea Abbott, Owner of Lot 19, 1294 Eatontown Blvd., was sworn in and gave a statement concerning the rear lot 17, that she had lived in neighborhood since 1982, that the back lot was never used not even for gardening, that the shed was only on back lot temporarily and observed that the lot was maintained and was grateful that they had kept the grass mowed.

As no one else from the public wished to be heard Chairman Widdis closed that portion of the meeting.

Mr. McCarthy made a motion supporting the position that the lots had not merged based on testimony that no real usage other than trivial had occurred that might link the two lots and history seemed to support that as well as the actions of the Borough which was seconded by Ms. DeSousa who agreed that Lot 17 maintained a separate identity from Lot 18 both from the actions by the owners of the property and the Borough's treatment of the lots and received the following roll call:

AYES:	Mr. McCarthy, Mr. Kleiberg, Mr. Fichter, Ms. DeSousa
NAYES:	Mr. Whitson, Mr. Sullivan, Mr. Widdis
ABSTAIN:	None
ABSENT:	Mr. Savarese
INELIGIBLE:	None

Ms. Smith stated the motion carried 4-3.

The Board adjourned for a short recess at 9:02 p.m., which was unanimously approved by the Board members present. Chairman Widdis called the meeting back to order at 9:09 p.m. with all previous members once again present and Councilman Johnson and Mr. Kahle also seated.

3. PB File: 2012-07
Sea Girt Avenue LLC
Block 88, Lot 8.03 – Vacant lot
Request for Bulk Variance(s) for Front Yard Setback and Minimum Habitable Floor Area

- A-1 Photographs, 9 Sheets, taken by Applicant, undated**
- A-2 Photographs, 9 Sheets , taken by Applicant, undated**
- A-3 Aerial Photograph of Neighborhood**
- A-4 Color Rendering of Plot Plan prepared by Nelson Engineering, Inc., dated May 6, 2012**
- A-5 Not assigned – due to Administrative Error this identification was not used.**
- A-6 Architectural Plans, Sheets 1 & 2, prepared by David B. Hartdorn, AIA, Architect & Planner LLC, dated April 27, 2012**

Dennis Cantoli, Attorney for the Applicant, provided introduction, whom would be testifying and began with the introduction of the following exhibits: 9 Photographs of Homes in the Neighborhood by Block, Lot taken by the Applicant which were marked as **Exhibit A-1**, 9 Photographs of Neighborhood marked as **Exhibit A-2**, **Exhibit A-3** Aerial Photograph of Neighborhood, **Exhibit A-4** Color Rendering of Plot Plan prepared by Nelson Engineering, Inc., dated May 6, 2012.

John Buletza, P.E., Engineer for the Applicant, presented his qualifications and that he had been before the Board previously in 2007 and was accepted as a witness in the field of Engineering and Professional Planning.

Mr. Buletza gave a description of the property and surrounding property locations referring to Exhibit A-4 and confirmed that the photographs in Exhibits A-1 and A-2 as well as the aerial photograph accurately depicted the surrounding area and the forms of housing. Mr. Buletza further testified that the property was subject to wetlands and that there was an area of 51,867 s.f. encumbered with wetlands and 2214 s.f. remaining unregulated area on the property, that the Applicant had obtained permits by the NJDEP to construct a dwelling including a Letter of Interpretation, a Transition Area Averaging Waiver and a Freshwater Wetlands General Permit #7 for development with a single-family residence, that the area shown in brown on Exhibit A-4 was the only place where the development could be placed.

Mr. Buletza then provided testimony concerning the required variances being sought – a 5' front setback where 30' required at the intersection of the Sea Girt Avenue and Milton Avenue right of ways. Mr. Cantoli asked Mr. Buletza about the architectural plans submitted that showed a front covered porch which in fact would not be covered and asked if that was critical in terms of the setback. Mr. Buletza answered yes, the structure with a roof would be located 5' from the front property line and further explained why the property was severely limited in the front yard referring to the Key Map on the survey which showed a triangular area carved out of the lot resulting from the subdivision that created the lot and the Board requirement that the area be dedicated to the municipality for the purpose of road widening such that the pavement would not have to be removed and the Applicant complied. There was some discussion between the Mr. Cantoli and the Board concerning the resolution from the subdivision that created the subject lot, who the Applicant was at that time, relationships between former and current owner, the distance between the proposed structure and the existing roadway pavement and the compliance with all other bulk requirements.

Mr. Cantoli then asked Mr. Buletza to discuss the 2 other variances being sought. Mr. Buletza described 2 additional variances being sought concerning the requirement for 1,050 s.f. gross floor area on the 1st floor where 481 s.f. provided and the requirement for gross floor area for both floors was 1800 s.f. where 1,230 s.f. provided, a description of the attached garage and the paved parking area to support a 2nd vehicle, referring to Exhibit A-4 the limits of the buildable area due to the wetlands.

Mr. Buletza also testified on traffic control and that most of the traffic travelled away from the property due to its location directly adjacent to the Conrail Railway right of way to the south and the fact that it was confluence of 2 roads was not on a through street on either of its frontages and that there was low amount of vehicular traffic in front of the property.

Chairman Widdis interrupted and asked Mr. Buletza to bifurcate his testimony so that planning was separate from engineering testimony.

Mr. DeNoia reminded Mr. White was still under oath from the last application and requested that the record reflect that any statements for comments made by Mr. White would be under oath.

Chairman Widdis continued that the purpose for separate testimony was also helpful for the public that may want to ask questions and asked if the engineering testimony was complete and was told yes.

Chairman Widdis asked for questions from the Board.

Mr. Fichter asked about ditches noted and asked if they fell under the jurisdiction of and Mr. Buletza said no, they fall under the jurisdiction of freshwater wetlands.

Mr. Kleiberg asked if the house would be air conditioned. Mr. Buletza deferred to the architect. Mr. Kleiberg expressed concern about sufficient room for condensers. Mr. Buletza added that the condensers could be added to the side of the garage and that there was 10' with the condensers measuring about 2.5 feet.

Mr. McCarthy asked for additional testimony concerning the contours, drainage and elevation of the house.

Mr. Buletza responded that the existing grade were approximately elevation 99, up at the road where Milton and Sea Girt Avenues met there was a manhole at elevation 100, the grade of the land down towards the house to the south was approximately elevation 99, proposed first floor elevation was 102.5, 3.5' above existing grade leaving 2.5' of exposed foundation, garage floor elevation 100.5 which was about 1-1.5' above existing grade so that there would be a garage basically level with the pavement out on the roadway, slightly higher to have a pitch less than 1% up into the garage and from the garage floor 2' up to the finished first floor, 3 steps.

Mr. McCarthy said the property was very long and asked if the contours graded toward the house or away from the house. Mr. Buletza answered that it graded away from the house..

Mr. White interjected for the Board's clarification that the elevations being given by Mr. Buletza were by an assumed datum and were not the same elevations used for flood hazard.

Chairman Widdis asked if the property was in a flood area. Mr. Buletza answered he did not believe the property was in a flood zone and did not have the FEMA map with him but stated his recollection was that it was in Zone C. Chairman Widdis commented that he believed that information was important as those elevations would change if it were in a flood area. Mr. Buletza responded that the elevations would stay the same but the datum would change. Mr. White commented that a conversion would have to be added so that the numbers would be adjusted downward. There was additional discussion about the elevations and the assumed datum and how the numbers were formulated and from what reference point.

Mr. Kahle asked Mr. White about a minimum pitch for driveways. Mr. White answered they try to keep it below 7%.

Mr. Kahle asked there's a porch but no roof. Mr. Cantoli answered that the architectural plans showed a front porch/small landing with a roof over it but was not being proposed and would be removed. Mr. Kahle expressed concern about the height of the house and how many steps would be off the porch and out towards the right of way corner because it was said 3 in the garage so there would probably be 3 out front so that would stick out 3 feet and plan shows only sticking out a foot from the foundation. Mr. Cantoli advised they would address that with the architecture's testimony and would change whatever needed to be made to make it conform. There was discussion about the height and that the plans would be made to conform however necessary followed by Mr. Buletza's explanation of the plan's details were correct and why.

Ms. DeSousa asked if any of the photographs exhibit depicted the actual area of development. Mr. Cantoli answered no but they would get that.

Mr. Whitson asked for a comparison with the area for the first floor in relationship to the meeting room they were presently in. Mr. Buletza gave an estimate of 22.3 x 24 would be the area exclusive of the garage. Mr. Whitson commented that the first floor was then basically one general sized room and asked if Mr. Buletza considered that good planning.

Chairman Widdis stated they would get back to that and redirected the floor to Mr. Cantoli who then presented a photograph of the building area in response to Ms. DeSousa's question. Ms DeSousa commented that the conservation area surrounding the building envelope there were full grown mature

trees that would abut the house. Mr. Buletza stated the area was wooded. Ms. DeSousa stated that it was trees, not reeds and that was within the setback and was told yes. Councilman Johnson asked about the front setback and was told 5' from the property line.

Mr. White asked Mr. Buletza for background information on the lot's creation. Mr. Buletza responded with basic information of the subdivision that created the lot but also stated he was not involved in that application. Mr. Cantoli added that the approving resolution discusses 2 homes to be constructed on the 2 lots further to the west. Mr. White pointed out nothing on the 3rd part, the remainder – the large part. Mr. Cantoli responded that there was nothing in the resolution addressing that. Mr. White continued that the resolution also called to the extent of the wetlands contained on the lot were extensive and probably the reason why a house was not proposed at that time.

Mr. White asked if the wetlands line depicted came from the 2000 approval. Mr. Buletza answered that the wetlands line shown was based upon the verified Letter of Interpretation #1338-03-0009.1. There was discussion about when that approval would have been provided with review of other documents from the DEP it was determined that 2003 was reasonable.

Chairman Widdis asked questions about how water would be addressed at the site, the existing topography, the proposed elevations, where water would be directed with responses by Mr. Buletza including water to be directed away from the house and towards the Conrail right of way intercepted by the right of way which had cut the natural drainage ditch by the flow of stormwater over the years and that was the way the water would still be. Chairman Widdis asked if there was enough height or differential which Mr. Buletza answered yes. Chairman Widdis asked for Mr. White's comments whom stated that it was a wetland buffer that could not be graded and the water flows would impact the property to the southeast. Chairman Widdis stated on the one side it wasn't an issue and said the question was would it affect any neighbors or run out onto the street. Mr. White answered that the grading was reviewed for compliance before anything issued by Building Department and that the swales created along the property line with Lot 7 in an attempt to bring that water back and not direct it towards the house on Lot 7.

Chairman Widdis opened the meeting to questions from the public on that witness only.

PUBLIC:

Christopher Despo, 357 Milton Ave, was sworn in and asked if Mr. Buletza had observed the site during a heavy rain event to which Mr. Buletza answered no. Mr. Despo pointed out that during rain events all the water ends up where the house was proposed and asked what they planned to do with all that water. Mr. Buletza answered that the applicant was not responsible for the drainage in the public right of way or lack thereof any storm drains and that the Applicant would not be changing the existing grading pattern on the property and was placing the house at the high spot on the property and grading the house in such a way to keep the house from being impacted by any runoff from the right of way and that they had created the swales to address the runoff from both the street and the house.

As no one else from the public wished to be heard Chairman Widdis closed that portion of the meeting.

Mr. Cantoli continued testimony from Mr. Buletza in the capacity of Professional Planner addressing positive and negative criteria. Mr. Buletza explained that the Applicant was proposing a single-family residence which was an approved and preferred use for that zone and that the property was difficult to develop the property in accordance with the strict guidelines of the bulk requirements of the Borough ordinance due to the unique configuration and the environmental impacts of the wetlands and transition areas on the property; pointed out that the overall size of the lot was adequate for development but potential severely limited by the environmental conditions and he believed that those exceptional topographic and environmental conditions on the property which were physical features uniquely affecting the property qualify the development for the bulk variance the Applicant was requesting as a hardship.

Mr. Cantoli asked because of the unique topography of the property because of the wetlands they were restricted as to the location of the house which Mr. Buletz responded yes, otherwise they could move the house back and would not have such a concern and the inability to move affects both the front setback and size of the house.

Mr. Buletza then provided testimony concerning negative criteria including the size of the proposed dwelling, outside of the building, was similar to those in the neighborhood, did not meet the minimum gross floor area requirements but was not grossly undersized by appearance from the outside and that all the other bulk requirements conform to the existing ordinance.

Mr. Cantoli asked if Mr. Buletza had observed any dumping on the property. Mr. Buletza answered yes, there was evidence of illegal dumping that had been taking place on the property which would be eliminated by constructing the project. Mr. Cantoli referring to Exhibit A-2, Photo 48, 50 if they correctly depicted what was being collected on the property and was told yes and asked if it was at the front of property and was told it was adjacent to the easterly property line.

Mr. Buletza continued that the house would be approximately 50' away from the nearest residential dwelling to the south and although the lot was being situated to address certain environmental requirements, they would not be pressing up against any neighbors any more than the other houses were in the neighborhood.. Mr. Cantoli asked if Exhibit A-2, Photograph 42 and Exhibit A-3 showed that and was told yes, it showed the house on Lot 7.

Mr. Cantoli asked Mr. Buletz if it was his opinion that the variance could be granted without substantial detriment to the public good. Mr. Buletza answered that he believed the variance could be granted because strict application of the Ordinance would impose a peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the Applicant and furthermore that the variance could be granted because the purpose of the Municipal Land Use Law would be advanced by the proposed deviation and benefits of the deviation would substantially outweigh any detriment and that it would not substantially impair the purpose of the zoning plan.

Councilman Johnson asked wouldn't a chain link fence accomplish the same positive criteria that a house might. Mr. Buletza answered he didn't know and that there was a fence there now.

Mr. White asked how Mr. Buletza determined that the house would be similar in size to those of the neighborhood – visually? Measurement of houses and assessment? Or just drive down the street and look. Mr. Buletza answered that he had done a drive by, looked at the aerials and visited the site a number of times and had not seen any large houses but saw ranch-style homes, smaller but nothing large but had not measured and was strictly subjective.

Mr. White asked questions with respect to the hardship regarding the wetlands, when the lot was created in 2000 were the wetland regulations the same as they were today concerning the buffers, delineation methods. Mr. Buletza responded that they go back and forth depending on the Governor in office and that he did not know. Mr. White asked what was the buffer and was told a 0 buffer on part of it and 50' buffer on the other part that was transition area averaged.

Chairman Widdis asked were the wetland rules at the time of the original subdivision the same as they were today. Mr. Cantoli commented that he did not think that made a difference. Mr. White stated if it was enacted back in 2000 and now present day, how was it a hardship if they've known since 2000 where the wetlands were and where the buffers were. Mr. Buletza responded the hardship would have been there before and it was there now. Mr. White stated not the creation of the hardship but the subdivision of the lot would be a self-created hardship. Mr. Cantoli stated that the Applicant did not do the subdivision but acquired the property after and that the self-created hardship would not apply and that the property was created by the land use board in town and there was no reason why the Applicant couldn't develop it and had permits and that the Applicant acquired the permits and has the right to

develop it. Mr. Buletza added that the Applicant obtained the permits and was now proceeding with the development application and if he had done that first he would have been told to go back and get the permits first which was a long drawn-out process beginning in 2005 and a lot of work had been done with the DEP, fauna studies, etc.

Mr. White reiterated that the argument was that the wetlands were the hardship not the location of the house and the lot when cut up in 2000 the subdivision created the hardship and did not know why the Board created 3 lots with only 2 houses. Mr. Buletza stated it was obvious because they could do the 2 houses and if they were able to secure permits for the 3rd lot then build on that lot. Mr. Cantoli added that the lot was what it was, the Board created the lot and they were now seeking to add a house.

Mr. Whitson stated that he was on the Board at the time of that application and they were given the impression that the 3rd lot would never be built upon which was why it was created. Mr. Whitson then asked about the parking and that the 5' setback from the right of way and that there would be 1 car in the garage and 1 car parked on the property and would they be parking the car in the right of way and was told yes.

Mr. Whitson also revisited his earlier question about the size of the first floor area and asked how many houses in the area had first floors that small. Mr. Cantoli responded that they don't know but probably none, but it was all they could build. Mr. Whitson commented that his observation to the Chair that a lot of the questions were being answered with "I don't know".

Ms. DeSousa asked questions about the approving subdivision resolution and the height of the approved houses and asked what the height was for the proposed house. Mr. Buletza deferred to the architect. Mr. Cantoli answered 27'. Ms. DeSousa asked if they had surveyed any of the other houses in the neighborhood to compare house width, size in comparison to the proposed. Mr. Cantoli answered that was the purpose of the pictures and that they would have to get permission from those properties to get on.

Mr. Sullivan stated he had no questions but commented that he was on the Board at that time and it was also his impression that the property would not be built on.

Mr. Kahle referred to the original subdivision resolution, commented that they sought a waiver for curbs which wasn't given and asked what would happen down Sea Girt Ave once curbs were put in what would be done with the water. Mr. Buletza answered that normally for a road project there would be storm drains and gave the reasoning behind each scenario and how it would be addressed. Mr. Kahle also asked about stockade fencing that was supposed to be placed along the rear of the property along the railroad tracks conditioned in the subdivision's approving resolution. Mr. Buletza added that the survey does not show stockade fencing.

Mr. Kleiberg asked if there were any storm drains in the street there now and was told no. Mr. Kleiberg pointed out the elevation at the manhole and at the garage elevation and that the garbage on the property was probably washed down the street and that there was only a 2 ½ inch difference between the manhole and the garage and that the water was going to end up in the garage. Mr. Buletza answered no, because they have swales going down either side of the house and disagreed with Mr. Kleiberg and stated he believed the existing grading plan would handle the existing runoff. Mr. Kleiberg stated that's the sides of the house but what about in front of the garage. Mr. Buletza answered that there's a low point at the edge of the pavement and that was where the driveway started and was at that point where it broke into a "Y".

Mr. Fichter asked Mr. White if he believed the correct variance was being sought and was told that was up to the applicant. Mr. Fichter continued that the testimony earlier said the application would advance the purposes of the Municipal Land Use Law and planning and asked which purposes were advanced. Mr. Buletza said for the reasons he listed he didn't think putting a house on the property would be a detriment to the MLUL. Mr. Fichter again asked what about the purposes. Mr. Buletza responded it's a

residential house in a residential zone, fits in generally with the other homes in the neighborhood, maintains a similar separation distance between the nearest house on Lot 7.

Chairman Widdis opened the meeting to questions from the public on that witness only.

PUBLIC:

As no one from the public wished to be heard Chairman Widdis closed that portion of the meeting.

Chairman Widdis advised that the Board's policy was to stop at 10:30 and asked if they still wanted to bring in their expert. Mr. Cantoli responded that it was up to the Board, that the architect was present and that he didn't believe it would take that long and was decided to proceed.

Mr. Cantoli submitted Architectural Plans, Sheets 1 and 2, prepared by David Hartdorn, AIA, Architect & Planner, LLC, dated April 27, 2012.

David Hartdorn, Architect was sworn in, presented his qualifications and was accepted as an expert in the field of architecture. Mr. Hartdorn gave a description of the proposed house, its dimensions, footprints, the reasons for the design of the house used, the elevations for height, room sizes, garage, ample storage and it was his opinion that the room sizes were acceptable as houses come in various sizes. Mr. Hartdorn also testified that he had thought the porch would be a nice feature for the house but was only presented as an option and was not necessary, testified concerning the front entry, the number of stairs, dimensions, elevation of the entry.

Mr. Whitson asked Mr. Hartdorn about the size of the first floor and how many of it would fit in the room they were in presently. Mr. Hartdorn answered 6.

Ms. DeSousa asked if there was an attic and was told no, only a pull down stair to access equipment and the attic stair was not shown as the drawings were only preliminary and would be more specific on the construction drawings.

Mr. Kahle asked if there was access from the garage to the house and was told no there was no door in the garage to the house.

Mr. Kleiberg asked if the room in the garage was for the water heater and was told yes, raised up. Mr. Kleiberg commented that he didn't know where they would put the furnace equipment.

Chairman Widdis opened the meeting to questions from the public on that witness only.

PUBLIC:

As no one from the public wished to be heard Chairman Widdis closed that portion of the meeting.

A member of the public spoke up and stated he had no questions but would like to make a statement. Chairman Widdis advised that there would be an opportunity for statements at another point in the hearing as they were not ready to vote on the application and then directed that statement to Mr. Cantoli for confirmation. Mr. Cantoli responded that based on the questions by the Board concerning wetland issues Mr. Zingis would be testifying so they were not ready for a vote.

Chairman Widdis advised the public member that the statement period would be on the date the matter was carried to for continuance of testimony.

It was advised that the application would be carried to the October 24, 2012 with no additional notice required.

BOARD BUSINESS:

4. Minutes of the meeting of September 19, 2012 were approved as presented on a motion from Mr. Whitson and a second from Councilman Johnson and approved by the eligible Board members.

RESOLUTIONS:

5. FMERA Plan Amendment #2 - As the Resolution was made available to the Board previously, Mr. DeNoia summarized the Resolution after which Councilman Johnson made a motion to approve the resolution which was seconded by Mr. Whitson and received the following roll call:

AYES:	Mr. Whitson, Mr. Kahle, Councilman Johnson, Mr. Kleiberg, Mr. Sullivan, Mr. Fichter, Mr. Widdis
NAYES:	None
ABSTAIN:	None
ABSENT:	Mr. Savarese
INELIGIBLE:	Mr. McCarthy, Ms. DeSousa

Ms. Smith stated the motion carried.

PETITIONS FROM THE PUBLIC: Chairman Widdis opened the meeting to Petitions from the Public and as no one from the public wished to be heard, Chairman Widdis closed that portion of the meeting.

ADJOURNMENT: As there was no further business, the meeting was adjourned at 10:36 p.m. on a motion by Mr. Whitson which was seconded by Councilman Johnson and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary